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Senate

The Senate met at 9:30 a.m. and was called to order by the President pro tempore (Mr. STEVENS).

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer.

Let us pray.

O God, who hears and answers prayer, bend down and listen to our thanksgiving and praise. We can rest because of Your goodness. You keep our eyes from tears and our feet from stumbling. Give our Senators strength sufficient for today's work. Be in their heads and in their understanding. Be in their eyes and in their looking. Be in their mouths and in their speaking. Be in their hearts and in their thinking.

Help them to remember that trials and challenges strengthen their faith until it is more precious than gold. Lead each of us to Your truth, and may our lives show that You have chosen us for Your glory.

We pray in Your powerful Name. Amen.

PLEDGE OF ALLEGIANCE

The PRESIDENT pro tempore led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

RESERVATION OF LEADER TIME

The PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

MORNING BUSINESS

The PRESIDENT pro tempore. Under the previous order, there will be a period for the transaction of morning business for 1 hour, with the first 30 minutes under the control of the Democratic leader or his designee and the second 30 minutes under the control of the majority leader or his designee.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. FRIST. Mr. President, this morning we will have a 60-minute period of morning business prior to resuming S. 5, the Class Action Fairness bill. I will have a brief statement shortly and the Democratic leader will have a brief statement. Then we will follow those statements with a 60-minute period for morning business.

When we resume the bill, Senator PRYOR will offer an amendment relating to State attorneys general. In addition, we have Senator DURBIN's amendment on mass actions pending from yesterday. Today we will begin disposing of these amendments as well as others that may be offered.

Yesterday we had a full day of debate as we did on Monday afternoon, but in order to finish the bill this week we need to begin the voting process, voting on these proposed amendments throughout the day. I am not encouraging amendments, but I do hope that if Members intend to offer amendments to the underlying legislation, they will make themselves available today so we can make the necessary progress.

I thank my colleagues on both sides of the aisle in advance as we work through this very important bipartisan bill, and I look forward to a very productive session today.

AFRICAN-AMERICAN HISTORY MONTH

Mr. FRIST. Mr. President, on the afternoon of February 1, 1960, in Greensboro, NC, four college freshmen from North Carolina A&T University changed the course of history. In an act of remarkable bravery, the four teens strode into the downtown Woolworth and sat at the ''whites only'' lunch counter. They ordered coffee, soda, and donuts, and as they expected, the store refused to serve them.

The young men waited in their seats until closing time. They didn't know at the time whether they would be beaten, whether they would be dragged out, whether they would be arrested. But they did know right from wrong and that segregation was an intolerable injustice.

The next day the four returned with two classmates. Again, the same order. They attempted to place an order for lunch. Again, the store refused.

Each day more and more students joined the Greensboro Four, including white students from nearby colleges. By the end of the week nearly all of those more than 60, 65 seats at the lunch counter were filled. Eventually hundreds of sympathizers filled Greensboro's downtown streets.

Rev. Martin Luther King, Jr. was already leading protests in other parts of the South against segregation in schools and on buses, but challenging the segregationist practices of privately owned business was something that was brand new. These four young men had opened a new front on the battle for civil rights.

In the next weeks and months the sit-ins spread to department stores, to clothing shops, to restaurants. In my own hometown of Nashville, and Raleigh and Charlotte and Atlanta and dozens of other cities throughout the South, thousands and thousands of students and civil rights advocates staged sit-ins at businesses that had discriminated. Many of the participants suffered arrest and heckling and violence, but these brave citizens were determined to end the scourge of segregation.

By April of that year, the Student Nonviolent Coordinating Committee,

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

or SNCC, was formed. The legendary organization led sit-ins around the country. Then, on July 25, 1960, Woolworth desegregated its lunch counters. By August of 1961, over 70,000 Americans had taken part in the sit-ins. Three thousand were arrested in the act.

Finally, in 1964, President Johnson signed the Civil Rights Act which outlawed forever segregation in public accommodations. A section of the Woolworth lunch counter can be seen not too far from here, at the Smithsonian Institution in Washington, DC. The counter and four stools and a sign advertising 29-cent banana splits sits in a place of honor on the first floor of the National Museum of American History.

As we celebrate African-American history this month, we reflect on these events and so many other events, large and small, that have shaped our country. From slavery to segregation, we remember that America did not always live up to its ideals. In fact, we often fell far short of them. But we also learned that fundamental to our national character is the drive to live out the true meaning of our creed.

In the 108th Congress we passed the African American Museum of History and Culture Act to establish a national repository for this great history. The new museum will house priceless artifacts, documents, and recordings. It will bring to life the vibrant cultural contributions African Americans have made to every facet of American life. Visitors from around the world will learn about 400 years of struggle and of progress. They will learn that the Capital itself owes its completion to America's first black man of science, Benjamin Bannaker, who reconstructed the city's layout from memory after Pierre L'Enfant quit the project.

The new museum's council, which includes many of America's most prominent men and women in business, entertainment, and academia, will meet early this year to begin the hard work of selecting a site for the museum, hiring a director, building a collection, and raising funds. From blood banking to the modern subway, from jazz to social justice, the contributions of African Americans have shaped and molded and influenced our national culture and our national character.

The African-American experience is one of the most important threads in the American tapestry. The National Museum of African American History and Culture promises to become one of our Nation's most prominent cultural landmarks.

I yield the floor.

RECOGNITION OF THE MINORITY LEADER

The PRESIDENT pro tempore. The Democratic leader is recognized.

ORDER OF PROCEDURE

Mr. REID. Mr. President, I ask unanimous consent that the time in relation to the statement I will give which pertains to the class action bill be charged to the class action bill. There is no time agreement, but rather than take up my leader time or morning business, that the time be charged against the time on the bill.

The PRESIDENT pro tempore. Very well. Without objection, it is so ordered.

CLASS ACTION FAIRNESS ACT OF 2005

Mr. REID. Mr. President, for the past 2 days the Senate has been debating the so-called Class Action Fairness Act of 2005. I want to spend a few minutes today talking about this bill.

Despite its title, the bill is not about fairness at all, in my opinion. It is about depriving consumers of access to the courts and letting corporate wrongdoers off the hook.

People ask, what are these cases all about? These cases are about things dealing with fairness. Class actions fall in a number of different categories: environmental pollution, insurance practices, wage-and-hour employment disputes, consumer fraud, dangerous drugs, products that kill, and consumer protection. In those categories we have had, in recent years, some very successful pieces of litigation that have made our society a better place. However if this bill had been law, those cases would have been removed to federal court where they would have likely been dismissed. It is important for states to continue to have the opportunity to protect their own citizens in their own courts.

For example, there was a case in New Hampshire dealing with environmental pollution brought by the State of New Hampshire against 22 oil and chemical companies responsible for polluting the State's waterways with methyl tertiary butyl ether. We refer to that as MTBE. These companies were accused of violating state consumer protection and state environmental laws. They were negligent. They produced a defective product and created a public nuisance. In this case, New Hampshire is seeking compensation for the cost of the cleanup as well as penalties, both monetary and punitive in nature. Under this bill, because the named defendant is a citizen of another state, the State of New Hampshire would have to have their case heard in federal court instead of their own state court.

In Louisiana there was a pesticide there that had decimated the crawfish population. At one time, they were bringing in about 41 million pounds of crawfish. After this chemical was put into the waterways, that dropped to about 16 million pounds. Crawfish farmers were going broke. The plaintiffs were all from Louisiana and the harm occurred there. They filed a class action in state court, and a Louisiana state court judge recently granted final approval on a settlement agreement. This case is a clear example of a state court having the opportunity to interpret its own state law, yet if S. 5 were already enacted, it would have had to be removed to federal court.

There was a chemical plant leak that occurred in Richmond, California that caused a dangerous cloud to form over the town. Over 24,000 people sought medical treatment in the days immediately following the leak. The residents sued as a class, and the chemical company had to settle. While only California residents were harmed in California, under S. 5 this case would have been removed to federal court because the defendant is based in New Jersey.

Insurance practices: In one case, a Missouri state judge gave preliminary approval to a settlement agreement in a class action brought by Missouri plaintiffs, where a pharmacist diluted prescriptions for thousands of patients, including chemotherapy patients. Because the defendant is based in Iowa, although they sell policies in Missouri, the case could be removable to federal court under this bill.

Equitable Life Insurance was accused of misleading and cheating customers. This was a situation of the so-called vanishing premium cases in the 1980s. They sold policies when interest rates were high. They told customers as soon as the interest rates went down their premiums would be lower. That was not true. Class action lawsuits were filed in Pennsylvania and Arizona state courts, and Equitable settled the suits for $20 million helping over 130,000 people. However, because the insurance company was based in another state, under this legislation, the case would have been removed to federal court and these people harmed between 1984–1996 would still be waiting for justice.

Wage-and-hour employment disputes: In California, Wal-Mart employees have been denied pay for actual time worked. A California state judge certified a class action brought by California plaintiffs. The harm occurred in California, nonetheless, under the proposed legislation the case would be removed to federal court.

Consumer fraud: Roto-Rooter overcharged approximately two million customers $10 each by adding charges to invoices violating state consumer protection laws. A class action was brought in Ohio where many of the class members live and where Roto-Rooter is based. Under S. 5, the case could be removed to federal court.

AOL, a Virginia based company, charged the credit card of their customers for services even after those customers had canceled their AOL subscriptions. The lead plaintiff in a class action case was a California citizen. AOL wanted to litigate the case in federal court under Virginia law. The California Court of Appeals held that the proper venue was in state court because Virginia law did not allow consumer class actions and the available remedies were more limited than under California law. This would undermine

California's strong consumer protection laws. Under this bill we are considering, California would be powerless to protect their own public policy. What's fair about that?

In Florida a person sold funeral plots that didn't exist and desecrated some of the graves that were there. The issues raised in this case are state issues and the coffins desecrated were only those in Florida, yet under S. 5 the case would be removed to federal court because the parent company of the funeral home is based in another state.

Products that kill: Lead paint has poisoned thousands of children since 1993. Ford sold police cruisers that are prone to fire. This bill would seek to remove these cases to our already overburdened federal courts where they would experience extreme delays and possible dismissal.

Consumer protection: Cases against Monsanto, Jack-in-the-Box, and Nestle would all be removed to federal court possibly denying the members in the class the protection of their own state laws.

I believe it has been good for our country to have these lawsuits because if you didn't have these lawsuits and you had the law that is now sought in this legislation, these cases, most of them, wouldn't have been brought.

I am not saying there is no room to improve the rules governing class action lawsuits. There is. There are abuses. Coupon settlement cases, I believe, are not good. Consumers get no meaningful relief, and the lawyers get everything. That isn't fair. If this bill simply addressed the coupon problem, all 100 Senators would vote for it. But this pending proposal goes much further. It effectively closes the courthouse doors to a wide range of injured plaintiffs. I have mentioned some of them. At the same time, the bill turns federalism on its head. It denies State courts the opportunity to hear State law claims brought by residents of that State.

My friends on the majority side, the Republicans, say they favor States rights. They should be embarrassed to support this bill, which is one of the most profound assaults on States rights to come before Congress in many years. Most disturbingly, this bill limits corporate accountability at a time when corporate scandals have proliferated.

As we began debate on this bill, the majority leader and I received a letter signed by attorneys general of New York, Oklahoma, California, Illinois, Iowa, Kentucky, Maine, Massachusetts, Maryland, Minnesota, New Mexico, Oregon, Vermont, and West Virginia. These attorneys general whose sworn duty is to protect the public and enforce State laws oppose the bill now before the Senate. They say that despite improvements since the bill was first introduced a number of years ago, that:

S. 5 still unduly limits the rights of individuals to seek redress for corporate wrongdoing in their State courts. We therefore strongly recommend that this legislation not be enacted in its present form.

They warn us further:

S. 5 would effect a sweeping reordering of our Nation's system of justice that will disenfranchise individual citizens from obtaining redress for harm, and thereby impede efforts against egregious corporate wrongdoing.

This bill would ''reorder'' our justice system, as the attorneys general have warned us.

Several amendments we are going to offer are important.

First, S. 5 will allow corporate defendants to remove many multi-state class actions from State court to Federal court. But under current law and practice, the Federal courts can refuse to certify these cases as class actions on the ground that there are too many State laws involved. Prior to the passage of S. 5, the Federal courts' failure to certify would allow consumers to refile their cases in State court, but this bill would preclude plaintiffs turned away in Federal court from going back to State court. If this problem isn't corrected, consumers will have lost their only means of redress when they have been cheated by a corporation in a matter too small to file an individual case. Plaintiffs in cases like the Roto-Rooter example would have no remedy, and the corporation could continue to take advantage of them.

Senator BINGAMAN will offer an amendment. It is my understanding that he and Senator FEINSTEIN are working on a compromise. Senator FEINSTEIN has been an early supporter of S. 5. She understands that this is a problem. I am confident she will work with Senator BINGAMAN to come up with some way to resolve this important issue.

Second, the bill will literally make a Federal case out of what has always been State personal injury cases. Sometimes such cases are consolidated by State courts for efficiency. They are not ''class actions'' at all. But the pending bill would include them under a newly invented term, ''mass actions,'' and allow them to be removed to Federal court.

For example, when a large number of people are injured by the same dangerous pharmaceutical drug, their claims may be consolidated by State court rules. Now those consolidated individual claims would be removed to Federal court where they will be subject to extensive delays or even dismissal if the laws of more than one State are involved. These mass torts often involve hundreds of plaintiffs who have been physically injured by drugs, medical devices, tobacco, lead paint, or ground water contamination.

S. 5 should be required to have a big label on it: ''Warning: This legislation may be dangerous to the health of all Americans''—especially healthy American consumers.

Senator DURBIN has already offered an amendment to deal with this ''mass torts'' issue. I hope that the chairman of the committee, Senator SPECTER, will work with him to see if this matter can be resolved.

These two things I have mentioned—the Bingaman amendment and the Durbin amendment—are issues of basic fairness.

Third, the bill would apply to civil rights and wage-and-hour cases that have nothing to do with the coupon settlements the bill sponsors say they want to address. These cases would now be subject to the same delay and potential dismissal as the personal injury cases I just discussed.

Class actions are particularly important for low wage workers. There are now dozens of class action suits in State courts representing tens of thousands of low wage workers who have been forced to work extra hours without pay or who have been denied their wages for other reasons. Also, many States provide greater civil rights protections than are available under Federal law. Senator KENNEDY will offer an amendment to carve out these cases from this bill. That is fair.

Fourth, as drafted, this bill even applies to cases brought by State attorneys general enforcing State laws on behalf of State consumers. Federalism has certainly taken a tumble around here when State courts are not permitted to hear cases brought by their own attorneys general to enforce State consumer fraud laws, environmental protection laws, and other vital State interests.

Separate from the letter I described earlier from Attorney General Spitzer and others, we have received a letter from the National Association of State Attorneys, the organization representing all 50 statewide prosecutors, Republicans and Democrats. Forty-six of them have signed it. They uniformly urge that the bill be clarified to include consumer class actions brought by State attorneys general. That is fair. Senator PRYOR, one of several former attorneys general we have serving in this body, will offer an amendment to achieve this goal.

This bill is imbalanced in that it establishes a 60-day deadline for Federal appellate courts to decide appeals of a district court's decision to remand a class action lawsuit, but it lacks a parallel mechanism to ensure speedy consideration of the motion to remand in the district court. Senator FEINGOLD will offer an amendment to correct this imbalance. If 60 days is not a good deadline, they can come up with another one. But unless the Feingold amendment is agreed to, these people can bring a case to court which will lay there forever.

None of these amendments we offer are killer amendments. All are modest improvements that would strengthen corporate accountability and ensure that vulnerable citizens get their day in court. I urge my colleagues to accept these amendments.

These amendments I have talked about to the underlying bill will be

helpful. However, even with these amendments, the underlying bill will still be a bad bill, but it would be better. They would certainly improve the bill.

There was a tremendously powerful article in Business Week last week entitled, ''A Phony Cure: Shifting class actions to federal courts is no reform.'' No one can say it is some liberal rag of the Democratic Party. In this article, even Chief Justice Rehnquist criticizes this legislation. The article emphasizes that Federal judges hate this legislation and it is more of a step towards chaos than reform. Justice Rehnquist says: Don't do this to us. Federal judges are too busy. Federal courts are already overburdened and it will make the case backlogs even longer. In addition to that, instead of helping Federal courts, the article states that it will cut back on those resources to our Federal court system, and it is going to leave these Federal judges in a real bind.

This month is Black History month, and this legislation brings to mind for many of us Brown vs. Board of Education. The distinguished majority leader, Senator FRIST, talked today about the first sit-ins by these courageous young men and women in the South which brought about a number of things. But one reason that the Brown vs. Board of Education case was able to move forward was because it was a class action. It was a culmination of appeals from four class action cases—three from the Federal court decisions in Kansas, South Carolina, and Virginia, and one by the decision of the Supreme Court of Delaware. Only the state court, the Supreme Court of Delaware, made the correct decision by ruling in favor of the African-American plaintiffs. The State court held that the segregated schools in Delaware violated the 14th amendment, Delaware rejected separate and unequal schools.

Another example is a case brought last June. The U.S. Supreme Court decided to allow a state class action lawsuit against Daimler Chrysler to continue in Oklahoma. That was an important case because it affects up to 1 million owners of minivans that have front passenger seat air bags that deploy in low speed accidents, very low speeds, with tremendous force, potentially killing children and hurting small adult passengers. Oklahoma's Supreme Court ruled that the case could go forward in state court for this defect. A federal court, relying on the Federal Rules of Civil Procedure, would probably find the case unmanageable.

These cases I have mentioned should be allowed to proceed. This legislation would not allow that. That is too bad.

This legislation, especially if we don't get these amendments passed, is disrespectful to States rights and will result in many instances of injustice. I am going to vote against this bill. I hope my colleagues will do the same. But I certainly hope my colleagues will do something to improve this bad bill. We need to be alarmed at what it is doing to States rights. I am going to vote against this bill, but I hope people will work with us.

I apologize to my colleague for taking away from his morning business time. I ask unanimous consent that when the Chair announces morning business the full hour be extended with one-half hour on each side.

The PRESIDENT pro tempore. The Chair states that was previously the understanding. It would not take a unanimous consent request.

The Senator from Oregon.

PRESCRIPTION DRUGS

Mr. WYDEN. Mr. President, yesterday, the Senate got the eye-popping news that prescription drug benefits will cost far more than anyone had ever anticipated. In fact, the early appraisal was that it would cost $400 billion, and then it shot up to over $500 billion. Yesterday, we learned that it would cost $720 billion over the next decade, and perhaps would even go to $1 trillion. A lot of us in the Senate, frankly, were not too surprised because the legislation doesn't allow for the use of cost containment strategies that are utilized in the private sector.

To me, it is incomprehensible, for example, that Medicare, with all of its bargaining power, wouldn't use the same kind of clout that a timber company does in Alaska or Oregon or an auto company in the Midwest or any other big purchaser. Under this law as it is constituted today, what Medicare does is the equivalent of standing in the price club and buying toilet paper one roll at a time. There is absolutely nobody in the United States who goes out and purchases that way. What Medicare is going to be doing just defies common sense because we all know that if you buy more of something, whether in Oregon or in Alaska or anywhere else, you say, Let us try to negotiate a better deal. But Medicare is not allowed to do that under current circumstances.

I have come today to say that in addition to the debate about how the numbers are crunched, what we ought to be doing is working on a bipartisan basis to ensure that we have real cost containment in this program that seems to grow in costs almost by the day. I have worked with Senator SNOWE for more than 3 years on legislation to do that. We have introduced it. It has bipartisan support.

On our side of the aisle, Senator FEINSTEIN and Senator FEINGOLD were original sponsors. Senator MCCAIN joined Senator SNOWE and me in this bipartisan effort. We simply believe that at a time when we are seeing so many Government programs cut and reduced and tremendous financial pressures for belt tightening, we shouldn't leave seniors without even the kind of private sector bargaining, the kind of private sector cost containment power that we see in communities all across the country.

I will tell you, I can't for the life of me figure out why Medicare shouldn't have the power to be a smart shopper. As it stands today, everybody in the United States tries to be a smart shopper instead of Medicare.

What I would like to do for a couple of moments is try to lay out the legislation that Senator SNOWE and I have spent so much time working on and why I think it is particularly critical right now.

For a senior who lives in rural America where there may be only one private plan serving that area—and maybe there is no private plan at all—that senior is likely to be part of what is called the fallback plan. As of now, all of those seniors in those small communities, many of them in Arkansas—I see our distinguished colleague has joined us; like me, she vetted for the law. We would like to see people in Arkansas and Oregon, in areas with large, rural populations, have some bargaining power the way smart shoppers would. Under the Snowe-Wyden legislation, we say that the seniors in those fallback plans could in effect be part of a group that could use private sector bargaining power in order to hold costs down.

Many of us also represent the larger cities. I have Portland, but we want to hold down costs in Miami, New York, and Chicago. These people might have a choice of larger health programs to try to deal with their benefits. Maybe they are in a managed care organization or what is called a PPO, preferred provider organization. However, these private entities ought to have some bargaining power to hold down the cost for all of their members. Our bipartisan legislation that I have with Senator SNOWE and Senator MCCAIN stipulates we can have bargaining power for seniors in those metropolitan areas as well.

This legislation is going to save taxpayers money as well, not just seniors but taxpayers because, as the Senate knows, we put out a substantial amount of money to offer assistance to employers to not drop their coverage. When the Medicare plans save seniors money on medicine, that means less cost for the retiree plan to make up. Containing costs on the Medicare side, in our view, will help keep costs down for employers insuring retirees as well.

We have an opportunity to get beyond the debate about the numbers that came out in the last day or so, these shocking numbers that Medicare prescription drug care will cost $720 billion. We can get beyond those numbers and go to a comprehensive, bipartisan, market-based cost-containment strategy, a bipartisan plan that will contain costs for rural and urban seniors in plans across the country, in plans in rural and urban areas, and a plan that will also provide cost containment for employers insuring retirees as well.

It is our view we desperately need some common sense as it relates to cost containment for prescription drugs in our country. It is my view that giving bargaining power to millions of seniors through the private

sector is essentially Economics 101. There is no sense waiting when the costs of this program go up almost daily. It started at $400 billion, then $500 billion, now we are at $720 billion, and we are still counting. With these costs continuing to go through the stratosphere, the choice for the Senate, in my view, is to either sit around and say we will just wait and see what happens—and maybe the next report will put this at $1 trillion—or we can take the opportunity in a thoughtful, bipartisan way to do what is being done in communities all across the country.

Virtually everyone who buys in quantity says: Excuse me, wouldn't you be willing to give me a break given the fact I am making additional purchases? Medicare is not doing it. It defies common sense. We have a bipartisan opportunity to reign in these costs that continue to soar. I hope the Senate will do this as soon as possible.

I yield the floor.

The PRESIDING OFFICER (Mr. VITTER). The Senator from Hawaii.

Mr. AKAKA. I thank the Chair.

(The remarks of Mr. AKAKA pertaining to the introduction of S. 324 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

The PRESIDING OFFICER. The Senator from Arkansas is recognized.

AGRICULTURE BUDGET PROPOSAL

Mrs. LINCOLN. Mr. President, today I rise to express my extreme disappointment in President Bush's agriculture budget proposal as well as his budget proposal for all of rural America. We worked very hard in this body, and in conjunction with the other body, to come up with a good farm bill.

Three years ago, President Bush signed that farm bill. It took us a while to get him there, but he finally signed it. As a member of the Agriculture Committee and a farmer's daughter, I was proud of the job we had done on behalf of the many hard-working farming interests in this great country.

I can remember growing up on our farm in Arkansas and how my father had great trepidation over whether he would be able to be successful with the kind of crop he had worked so hard to produce, because he knew so many variables were completely out of his control, whether it was drought, whether it was flooding, whether it was world market prices. Everything out of his control had such a great bearing on whether he could be successful.

I was especially proud of the agreement we made with the Arkansas farmers to support them because of those things they are faced with that are out of their control. It was an agreement we made with the farmers, their families, and their communities.

The 2002 farm bill was a great deal for farmers and consumers, for all of America. However, not everyone agrees. This past weekend, the New York Times ran an op-ed outlining proposals to undercut the 2002 farm bill by cutting aid to our farmers in this Nation. It seems that the President has been taking his agricultural advice from the New York Times because, lo and behold, on Monday morning he sent a budget over to Congress that mirrors the piece in the New York Times.

I would like to suggest first and foremost that he turn to a more reliable source to get his advice on agricultural policy. Because, for the life of me, I still cannot figure out what it is that they grow or oversee growing, looking down out of those skyscrapers in New York City, that would merit them providing that kind of advice to the President of the United States over the hard-working men and women who produce the food and fiber not just for this country but for the people of this globe.

If the President would like, I will be happy to offer him some advice on agricultural policy. I certainly hear from his administration officials and friends here in Congress who are not shy about sharing with me their opinions on issues such as tax reform and trade policy and Social Security. Well, agricultural policy is important to this Nation as well. If the President does not want my opinion, then I suggest he sit down with some real farmers from my home State of Arkansas or other farming States across the Nation and get their opinions.

When we were debating the 2002 farm bill, there was a lot of misinformation about farmers and farming that was floating around us all. I, for one, am determined to ensure that those perceptions are challenged. Most importantly, I want to ensure that the uninformed judgments about farmers are never used in setting our agricultural policy in this country.

Let's look at a few of the things that critics of farming said would happen if we were to enact the 2002 farm bill.

First, they said it would bust the budget. I heard my colleagues on the other side down here earlier this week describing how in the first 2 years the farm bill has come in more than $15 billion cheaper than was expected or projected.

Second, folks said it would lead to overproduction. They were wrong again. According to USDA, production remains steady.

Third, those naysayers said it would interfere with trade. Last year, our exports were at an all-time record high. In fact, the only people I know who believe our farm policy interferes with trade is our trade competition from other countries, the same people who sit across from us and from our negotiators during trade talks and ask us to take away our support for our farmers while they hang on to the very support they provide their agricultural producers. Does it sound like a good deal? You bet it does—to our competitors. We fight long and hard to make sure there is a fair playing field for our agricultural producers in this country, and they deserve it.

Finally, the critics made clear what they thought about farmers. They said that farming is no longer a matter of importance to the American economy. I say to the Presiding Officer, farming is important to the economy of your great State of Louisiana and many others. I want this body to think about that for a few minutes. I want those critics to take a trip to the South and to the Midwest. I want them to take a trip to my home State of Arkansas where one in every five jobs is tied to agriculture. Better yet, I want them to think about agriculture's contribution to our Nation's security and well-being.

So the critics are all wrong about farm policy, and they are certainly wrong about farmers, the hard-working families that produce food and fiber so each of us can lead that healthy life. They are also wrong to think that farm policy does not affect Main Street USA.

To doubters, I point out the 1980s and the farm financial crisis that existed then. During that time, we saw entire communities and towns dry up and blow away.

Now I would like to mention how our farm support compares to the rest of the world, how critical it is that we maintain those producers we have. We give our farmers $40 per acre in aid, while Europeans enjoy a $400 per-acre subsidy. Apparently, the President wants French farmers to have a competitive edge over our American producers. It seems to me we should be asking them to bring their support down before we unilaterally reduce ours.

At the end of the day, we need to take the recommendations of experts. We spend money, time and time again, to come up with these commissions, to come up with these reports. We need to take a look at them, the recommendations of experts we commission to look at the farm bill. This panel of experts made a clear recommendation that we should not change the 2002 farm bill until it is time to deal with that in 2007.

Time and again, we see the critics misuse facts and figures to make their case in an attempt to villainize farmers and drive public opinion against them. For the sake of time this morning, I will spare my colleagues from refuting point by point the numerous inaccuracies in the stories President Bush is reading about huge farms getting massive payments.

I tend to get a little passionate about this issue. Maybe it is because I am a farmer's daughter. Maybe it is because I believe in the farm families of this country. Maybe it is because I still go home and remember what it is like in those rural communities.

But if you listened to the critics, you would believe that Long Farms—which is a great example—in Blytheville, AR, was about to be publicly traded on the

New York Stock Exchange. Clark Long and his two sons are probably wondering how they missed out on all the benefits of these huge agribusinesses that are talked about in these stories.

The fact is, we have payment limitations in our farm policy already. We accepted them as a part of the compromise we struck in the 2002 farm bill, a bill that was debated for 2 years and should be viewed as a contract between the Federal Government and the hard-working farm families of this country, their lenders, and others they do business with all the way up and down Main Street, the entire communities that depend on these hard-working farm families that produce the food and fiber for this world.

The bottom line is, changing payment limitations midway through the deal has the real potential to put Arkansas farm families and other farm families across the South and in other places in a terrible spot.

In closing, despite the President's willingness to listen to the critics on the New York Times editorial board and break his contract with America's farmers, I still believe in farmers and farming communities. I still believe in those people who get up at 4:30 every morning to go out and work that farm, to make sure I and the rest of America can enjoy the safest, most abundant and affordable food supply in the world.

Per capita, we pay less for our food than anybody else out there. Is that not worth something to us in this Nation, to recognize the diversity across our great land, and understand that those who farm in different regions of the country and farm different crops have to use different economies of scale in order to compete in a global marketplace?

I want the farming communities in Arkansas to know exactly where my loyalty lies. It lies with them. I will stick with the rock-solid values and hard work of those farm families across Arkansas and other areas of our Nation. And I will never forget it, even after I am reelected. I encourage the President to relook at what he has done to the viability of many of these farm families across the Nation.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Colorado is recognized.

Mr. ALLARD. Mr. President, I understand now we are on the Republican time.

The PRESIDING OFFICER. That is correct.

SOCIAL SECURITY

Mr. ALLARD. Mr. President, I want to take a moment to talk about Social Security and the challenges that face this Congress in order to save Social Security for future generations.

When Franklin Delano Roosevelt signed the Social Security Act into law, the United States of America was a very different place than it is now. By looking at this chart, which shows an example of a family in 1935 and an example of a family in the year 2005, you can see that a lot has changed.

Now, I ask my colleagues to keep this picture in mind, taken 70 years ago, as we go through the debate on how to save Social Security.

A lot has changed since 1935. Social Security was a great deal for the Government in 1935. Workers would pay the Government a portion of every paycheck. The Government would keep these funds and could use them to pay other Government liabilities. It was unlikely that many of the beneficiaries would reach retirement age.

From the employees' standpoint, in 1935, Social Security was a big gamble. Employees would be required to participate in the program, contributing a percentage of their income for their entire adult working life. This program would be a retirement safety net, but would only yield a small percentage rate of return.

The employee could not access it or use it for any other reason. If they happened to die prior to receiving the benefits, their family could not inherit the account. And even if they were diagnosed with an expensive terminal illness, they could not draw on the Social Security account to cover the costs.

Times have changed in ways far beyond the hair style, the fashion, and the entertainment that is reflected on this chart. Demographics have radically shifted, necessitating that we update and modernize the system to save Social Security for the 21st century.

Life expectancy has changed dramatically over the past 70 years. In 1935 the average person lived to be 63 versus 77 years of age in 2004. This difference becomes even more dramatic when we look at the differences between men as compared to women. Looking through the Social Security lens in 1935, this was excellent for the system's financial stability. Men paid into the system but because of life expectancy generally did not live long enough to receive benefits. While women generally lived longer than men, in 1935 the few women who did participate in the workforce still did not generally receive many benefits based on life expectancy.

As this next chart shows, an American who turns 65 can expect to live longer now than they did in the past.

Instead of living an additional decade, seniors can now expect to live about 17 more years. In 2040, when Social Security is nearly bankrupt, senior citizens can expect to live even more additional years. For example, a woman who turns 65 in that year is expected to live another 21 years. Without permanent reform, this woman will not be able to depend on Social Security for her retirement. We need to update and modernize the system to save Social Security so she can have that security for the remaining years of her life.

This chart further shows how elderly Americans are rapidly becoming a larger percentage of the country. As Americans are living longer, they are increasing in number and rapidly becoming a larger percentage of the population. For example, in 1950, less than 10 percent of Americans were age 65 and older. Within a decade, seniors will make up 15 percent of the population, and in 25 years, seniors will comprise more than 20 percent of the population. We can expect that percentage to continue to grow.

In 1935, when the Social Security system was created, the Government did not need to prepare for the possibility of a depleted system. Seniors made up a very small percentage of the population because most people who were owed benefits simply never reached retirement age. As seniors become a larger portion of our population, we need to update and modernize the system to save Social Security for the 21st century.

Workforce distribution, as you can imagine, has also changed dramatically over the past 70 years. One of the more remarkable characteristics in the past century was the increase of women in the workplace. In 1935, approximately 24 percent of women worked outside the home and generally in a very limited number of professions, such as nursing and teaching or domestic service. Today, slightly less than 60 percent of women work outside the home in a variety of professions. Women make up 46.5 percent of the workforce today versus approximately 23 percent in 1935.

In 1935, when women did not usually work outside the home, they also did not pay into the Social Security system as men did. Even though there are now more people paying into the system as they retire, there will be a greater number of people drawing on the system a longer period of time.

As it was structured in 1935, the Social Security system was not designed to support elderly people for a long retirement such as we enjoy today. As female workforce participants continue to retire and draw benefits, we need to update and modernize the system in order to save Social Security for the 21st century.

As we all know, Social Security is a pay-as-you-go system, meaning current retiree benefits are paid with existing employee payroll taxes. As times change, the payroll tax rate has been increased a number of times in an effort to keep up with the demographic changes. Referring to this next chart, you can see that payroll taxes have increased dramatically over the past 70 years. They were a lot less when the Social Security system was enacted. Workers were taxed only 2 percent, and that was only on the first $3,000 of their income; whereas today workers are taxed 12.4 percent, and on the first $90,000 of income for Social Security. Americans pay a significant amount of their money toward Social Security. This amount is still not enough to compensate for an aging population

that may spend more than 15 or 20 years in retirement drawing benefits from a system that was never designed to support them for that length of time.

Unless we plan to continue the payroll tax hikes of the past, which is not a prospect I would support, we need to update and modernize the system to save Social Security for the 21st century.

As I mentioned, Social Security is a pay-as-you-go system, with current workers paying taxes to support current benefits for retirees. This means there must be enough workers paying taxes to provide for retirees. The ratio of workers to retirees has been steadily declining, and this is possibly the most telling comparison showing the need for reform.

As this next chart shows, in 1945, there were 42 workers paying taxes for every single person receiving benefits. In 2005, 3.3 workers pay for each beneficiary, and soon there will be two workers paying for every single person receiving benefits.

As the baby boomers retire, the workforce cannot support the aging population. Since we have such a large number of retired citizens, the Social Security system will be depleted in the not so distant future. We need to update and modernize the system to save Social Security for the 21st century.

Realities have changed in many different ways since Social Security was created in 1935. People live longer. Seniors make up a larger percentage of the population. Women make up more of the workforce, and the worker-to-beneficiary ratio is falling. Unless Congress faces up to these realities, the long-term outlook for Social Security is very bleak.

In conclusion, let me point to my last chart, which shows that in 2018, Social Security costs will permanently exceed revenues, as the lines cross at this point. My colleagues on the other side of the aisle would like us to believe that doing nothing is the best course of action. I happen to believe differently. I stress to my colleagues that the cost of doing nothing is a serious detriment to the Social Security system for future generations. Time is running out. This problem will not go away. This Congress, this year, we must update and modernize the system to save Social Security for the 21st century.

I yield the floor.

The PRESIDING OFFICER. The Senator from South Carolina.

SOCIAL SECURITY'S CHALLENGE

Mr. DEMINT. Mr. President, I rise to discuss Social Security and to say how honored I am to serve along with the President, who has shown his willingness to confront very difficult issues to help build a better future for America.

President Bush has clearly laid out that we have a challenge with our Social Security system, but he has also made it clear that he believes Social Security is a promise we must keep. Social Security was started to make sure that no American retiree, no senior citizen lived in poverty. It has been successful in accomplishing that. This is a promise we need to make sure is part of any changes in Social Security.

We know that change is frightening for all of us, particularly senior citizens. I know in my own family, as my relatives have gotten older, the less change the better for them. And we need to make sure of any changes in their financial security, that we reassure them that we are not taking anything away that will put them at risk. Unfortunately, as we discuss needed changes in Social Security, some have taken advantage of this to frighten our seniors. What I would like to discuss briefly this morning is what retirees and workers in this country need to know about the changes that President Bush is discussing.

One thing is important to make clear: The changes in Social Security that we are discussing today and that the President is discussing as he travels around the country will not affect anyone over 55. Anyone born before 1950 does not have to give these changes a second thought. Nothing about their retirement income will be affected. It is secure. In fact, the legislation we are discussing will, for the first time, guarantee that we won't change their benefits. It is important for everyone to know, particularly those over 55, that as the program is structured today, this Senate, this Congress, this President could change it at any time. In fact, many people who say there is no problem with the system and that these things could be corrected with small adjustments, unfortunately, when you ask them what these adjustments are, they are always small benefit cuts and tax increases, as we have done over 30 times in the past.

The President is talking about making sure that this doesn't happen again for anyone over 55. But what folks below 55 need to know—my children and, hopefully, someday my grandchildren—is that we are actually going to give them a better deal than they have now with Social Security because by the time my children retire, the current program will begin to cut their benefits dramatically.

It is important for American workers today to know that the average American family contributes over $5,000 a year in Social Security taxes. That is a lot of money for families who have very little money to save. Unfortunately, we are not saving one penny of what today's workers are putting into Social Security.

When I say that to folks back home, they generally smile at me like I am not telling them the truth: You mean we are putting over $5,000 a year in Social Security and you are not saving one penny of that?

I say: That is exactly true, unfortunately.

This is a very risky situation for people who are working today and contributing a lot of money. And folks who are talking about making small adjustments to fix Social Security for their future are actually asking them to pay more into Social Security in return for a smaller benefit in the future.

Fortunately, our President does not think this is a good deal. The plan that the President is discussing—and actually some variations that a lot of us have been working on—needs to make sure that any changes in the Social Security system are actually a better deal for poor and middle-income workers. I know one plan we have worked on is actually constructed in a way that the less people make, the bigger percentage of their Social Security taxes goes into their account. This gives younger and lower income workers the chance to accumulate as much money as they need to have a more secure retirement, with a better retirement income.

These plans also give people real ownership. I have heard folks say that the President's ideas take money out of Social Security and put it in the stock market. That is not true. I don't know if folks are confused or just don't have the facts straight, but what we are talking about with the President's changes is for the first time actually saving the money that people are putting in Social Security. And we are talking about, as a government, putting more money into Social Security than is now coming in through payroll taxes. So actually we are adding dollars to the Social Security system, making it stronger and more secure in the future. Younger workers will have the chance, as they work and grow toward retirement, to accumulate a savings account. And the exciting thing for us in the Congress is recognizing that many Americans now have no savings. They own very little. They can't benefit from the growth in our economy. And while a part of America owns things and it grows and earns interest, so many Americans don't have that opportunity.

What the President has put before the American people is the opportunity for every American worker to become a saver and an investor and to do it in a way that secures their retirement much more than it is secure today and protects their income. I believe that any changes in Social Security using personal accounts should guarantee low and middle-income workers a level of income so that there is no risk to them as they look at changes in the future.

We know, as we have looked at the program, that the opportunity for low-income workers is actually to get a larger income in retirement than they have been promised today. But we need to make sure, answering the critics of these changes, that we assure workers that there will be no benefit cuts, particularly for low and middle-income workers. And that assurance can be built into a plan.

It is important that all of us in the Senate and the Congress and, of course, the President, continue to let the American people know that the Social Security system, as it is designed today, needs some changes if it is going to be there for tomorrow's workers. But we also need to reassure them that these changes actually create a more secure and a stronger Social Security system than we have today.

As we have already said, the seniors of today, those near retirement, will not be affected, but younger workers for the first time will have the opportunity to actually save what they are putting into Social Security. This is an opportunity for a generation, for us in Congress to save Social Security, strengthen it, and make every American worker a saver/investor. This is an opportunity of which I want to be a part.

Thank you, Mr. President. I yield the floor.

Mr. MCCONNELL. Mr. President, before the Senator from South Carolina leaves the floor, I know this is his first major policy address. I think he has addressed the Senate before on another subject, but this is his first address.

I would just like to say to the junior Senator from South Carolina that I have already learned that there is no one in this body, whether they have been here a while or just gotten here, who knows any more about the Social Security subject than the Senator from South Carolina.

Mr. President, we need that expertise. This is an extraordinarily important debate. I thank him for his support and contribution.

Mr. DEMINT. I thank the Senator.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. CARPER. Mr. President, I am happy to be in the Chamber. I recall 4 years ago when I gave my first speech in the Senate, and I realize my colleague from South Carolina has given a lot of speeches over in the House of Representatives at the other end of this building, but it was a good day for me 4 years ago, and I suspect it is a special day for everyone involved.

It is a great pleasure to know the Senator, and I look forward to working with him. I welcome the Senator to the Senate and congratulate him on his maiden speech.

Mr. DEMINT. I thank the Senator.

The PRESIDING OFFICER (Mr. DEMINT). The Senator from Louisiana is recognized.

WORKING FOR THE PEOPLE OF LOUISIANA AND THE UNITED STATES

Mr. VITTER. Mr. President, what a difference a day makes. At this time yesterday I was riding in a Mardi Gras parade with my wife Wendy and four young children throwing beads and toys to throngs of young revelers. Today I stand on the floor of the Senate to participate in one of its many great traditions by delivering my maiden speech—a contrast to be sure but perhaps a fitting segue since both exercises are about a wonderfully unique place called Louisiana and particularly the great faces and high hopes of its children.

As I begin, I wish to express to my new Senate colleagues what an enormous privilege and honor it is to serve with them. From our most senior Member, the senior Senator from West Virginia, to our youngest, the junior Senator from New Hampshire—I missed that mark by 3 years, by the way—this body is filled with bright, talented, and passionate men and women who care deeply about our country. And, of course, this includes the senior Senator from Louisiana, Ms. LANDRIEU, who honors me with her presence in the Chamber today. I look forward to working with each and every one of you, always putting country above party, people above politics. That doesn't mean we will always agree, of course. In fact, it may mean my words and actions will be particularly spirited and passionate, but that is only because of the sincerity and urgency I bring to an important job in important times.

There is also one even greater honor than serving with you which I want to acknowledge, and that is being chosen to serve by the wonderful people of Louisiana.

The media and pundits put great emphasis on my being the first Republican Senator from Louisiana since Reconstruction—or in 121 years. Put another way, I am the first Louisiana Republican popularly elected to the Senate in history. I think the people of Louisiana were very focused on making history in my election but in a very different way that had nothing to do with narrow partisan politics. They responded to my call to make history by lowering prescription drug prices dramatically; by expanding choice and access to affordable health care through empowering patients and their doctors, not Government or insurance company bureaucrats; by doing the difficult but necessary work to create great jobs in Louisiana, such as fighting corruption and cronyism and demanding standards and accountability in education; by forging a Federal commitment to save a unique national treasure, the quickly disappearing Louisiana coast; by truly honoring our seniors with true Social Security that the politicians can't touch.

This is the history Louisiana citizens voted to make, and this is the history I am committed to help forge. This is why my first legislative action as a Senator was to introduce the Pharmaceutical Market Access Act of 2005, to put affordable prescription drugs within reach of all Americans.

Now, I have to say this was not an easy first action. Clearly, this bill is opposed by some very powerful interests in Washington such as the big drug companies. It is opposed by the administration and was not particularly welcomed by any leadership in Congress, Senate or House, Republican or Democrat. But I could not ignore the wishes of a vast majority of Louisiana citizens.

As I travelled throughout Louisiana over the past year, I heard countless seniors in particular tell similar stories about the outrageous costs of their prescription drugs and how it burdens their lives. The United States is the world's largest market for pharmaceuticals. Yet we pay the world's highest prices. American seniors alone will spend $1.8 trillion on prescription drugs over the next decade. Meanwhile, citizens of virtually every other industrialized country pay significantly lower prices, lower by 30 percent or more. And this includes many countries which are not dominated by old-fashioned statist price control regimes.

My bill would make prescription drugs more affordable by expanding free trade and world commerce, by legalizing the importation of prescription drugs from 25 industrialized countries with pharmaceutical structures equivalent or superior to our own. For the first time, individual consumers would be allowed to legally import prescription drugs for their personal use.

Critics of drug importation cite safety as their primary concern. I share a belief that the safety of prescription drugs is paramount. My bill takes steps to address real safety concerns and strengthen existing laws by adding new requirements to promote the safety of prescription drugs here at home and those brought in from abroad. It includes new requirements that imported prescription drugs be packaged and shipped using state-of-the-art counterfeit-resistant technologies or be carefully tested for authenticity before entering commerce in our country.

Drug importation is not a conservative or liberal issue. It is not a Democrat or Republican issue. It is a universal issue and challenge to provide our Nation's consumers access to safe and affordable drugs. That is why I worked to assemble a coalition of Senators and Representatives from across the political spectrum in support of this legislation. This coalition makes the bill unique as the first bipartisan and bicameral drug importation proposal. It is the companion bill to that offered by Representative GUTKNECHT in the House. An earlier version of the Gutknecht bill, of course, passed the House last Congress with my strong support and vote and stands as the only bill ever to pass either body on this subject. I look forward to working with all of my new Senate colleagues to advance this crucial fight. And, of course, my door is always open to those who want to join our effort or who have other ideas on how to bring the high cost of prescription drugs down to an affordable level. This issue is too important for us not to act.

In addition to lowering the price of prescription drugs, I look forward to

working with my Senate colleagues to take on other crucial challenges. I will be an active participant in the Social Security debate because we have a duty to the American people to ensure that their Social Security money is protected, not just for the current generation of retirees but for future generations as well. That is why I introduced my version of the Social Security lockbox last week and why I support the innovative idea of secure personal retirement accounts.

This week I will participate in the debate on class action reform in support of the Senator from Iowa, and I am hopeful we will not stop here. In the near future the Senate needs to address the problem of frivolous lawsuits that are driving more and more doctors out of business and robbing so many rural communities of access to the most basic health care.

I will also keep up the fight against Louisiana corruption and cronyism that still costs us jobs back home. As the folks back home know, I have gotten a few scars from this battle in the past but that is OK; I am ready to continue this fight in the Senate because it is a fight about doing right by Louisiana.

I look forward to working with Senator LANDRIEU on key Louisiana projects that will protect and strengthen our Louisiana economy. By working together we will be able to secure the funding needed to preserve our coast, finish the construction of I–49, and protect our State's vital military installations.

Every morning that I wake up at home in Louisiana, I help my wife Wendy get our four children up and ready for school and for life. Then I view what flows naturally from that. I look for new ideas and innovative avenues to improve the lives of every child in Louisiana. And now in doing so I look for new ways to work with every Member of this great body to build that brighter future.

Mr. President, I thank you and I yield the floor.

Mr. MCCONNELL. Mr. President, I say briefly to the junior Senator from Louisiana, thank you for a marvelous opportunity to hear your first policy speech in the Senate. On behalf of all of our colleagues on both sides of the aisle, we welcome you here, and it is a pleasure to listen to your priorities not only for Louisiana but for the Nation.

I yield the floor.

The PRESIDING OFFICER. The Senator from Louisiana.

Ms. LANDRIEU. I thank the Chair. I rise to say a few words to congratulate my colleague, a gentleman I have known for many years and so many in Louisiana and around the Nation have come to admire and respect for his energy and commitment. I can only say the only disappointment in his maiden speech is that he did not call for the Mardi Gras to be a national holiday. The two of us are going to join forces and continue to work on that. I think most of our colleagues would readily sign that resolution, so we will see.

But let me in seriousness thank him for joining the effort and putting his shoulder to the wheel to lower prescription drug costs for the people of Louisiana and our Nation. There are many critically important and urgent issues before the Congress but that ranks among the top. I believe his expertise in that area is going to be called on often in the next few months as this debate continues.

Also, I would need to mention that I thank him for his efforts in mentioning and fighting for, both in his time in the House and the Louisiana Legislature, the issue of coastal erosion. I see our good friend, the Senator from Arkansas, in the Chamber, and I was joking with his colleague, Senator LINCOLN, last night, saying if we are not successful in our efforts against coastal erosion, they, too, will have the great benefit of representing a coastal State because Louisiana may not be there if we do not address this issue.

On accountability in education, this Congress has made remarkable progress, and our State, you may not realize but as Senator VITTER knows, is leading the Nation in both accountability and also requirements in those new standards, and on transportation. I look forward to working with him.

He has two excellent committee assignments on Commerce and EPA. He will follow in the great footsteps of Senator John Breaux who served so ably on the Committee on Commerce in the area of fisheries as well as coastal issues on that committee, and on Transportation.

So I say to Senator VITTER, welcome to the Senate. Your energy, your enthusiasm, and your vision are going to mean a great deal to strengthen this already august body. Thank you and God bless you in your term.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

CLASS ACTION FAIRNESS ACT OF 2005

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of S. 5, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 5) to amend procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, and for other purposes.

Pending:

Durbin (Modified) Amendment No. 3, to preserve State court procedures for handling class actions.

The PRESIDING OFFICER. Under the previous order, the pending amendment is set aside and the Senator from Arkansas, Mr. PRYOR, is recognized.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, parliamentary inquiry: We are proceeding now to go to the class action bill?

The PRESIDING OFFICER. The Senator is correct.

Mr. SPECTER. And the next order of business is the Pryor amendment?

The PRESIDING OFFICER. That is correct.

Mr. SPECTER. I see the Senator from Arkansas on the floor, so I will yield the floor.

AMENDMENT NO. 5

Mr. PRYOR. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER (Mr. GRAHAM). The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Arkansas [Mr. PRYOR], for himself, Mr. SALAZAR, and Mr. BINGAMAN, proposes an amendment numbered 5.

Mr. PRYOR. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To exempt class action lawsuits brought by the attorney general of any State from the modified civil procedures required by this Act)

On page 5, between lines 2 and 3, insert the following:

''(1) ATTORNEY GENERAL.—The term 'attorney general' means the chief legal officer of a State.

On page 5, line 3, strike ''(1)'' and insert ''(2)''.

On page 5, line 5, strike ''(2)'' and insert ''(3)''.

On page 5, line 12, strike the period at the end and insert the following: '', but does not include any civil action brought by, or on behalf of, any attorney general.''.

On page 5, line 13, strike ''(3)'' and insert ''(4)''.

On page 5, line 17, strike ''(4)'' and insert ''(5)''.

On page 5, line 21, strike ''(5)'' and insert ''(6)''.

On page 6, line 1, strike ''(6)'' and insert ''(7)''.

On page 6, between lines 5 and 6, insert the following:

''(8) STATE.—The term 'State' means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and any territory or possession of the United States.

On page 14, strike lines 20 and 21, and insert the following:

(1) by striking subsection (d) and inserting the following:

''(e) As used in this section—

''(1) the term 'attorney general' means the chief legal officer of a State; and

''(2) the term 'State' means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and any territory or possession of the United States.''; and

On page 15, line 7, insert '', but does not include any civil action brought by, or on behalf of, any attorney general'' before the semicolon at the end.

Mr. PRYOR. Mr. President, I rise to offer an amendment to S. 5, the Class

Action Fairness Act of 2005, to ensure that State attorneys general elected by the people of their States as the chief law enforcement officer will still be able to do their business and protect the people of their States.

My amendment simply clarifies that State attorneys general should be exempt from S. 5 and be allowed to pursue their individual State's interests as determined by themselves and not by the Federal Government.

I know that S. 5 is intended to fix problems around class action law in America, and I think most agree that the attorneys general are not part of the problem. In the simplest terms, this amendment allows them to seek State remedies to State problems. I hope we can all agree infringement on State rights should not be a result of this bill.

I believe class actions remain an important tool for enforcing shareholder and employee rights, for cracking down on telemarketing fraud in attempts to prey on the elderly, and in forcing companies to improve product safety both in the manufacture of unreasonably dangerous products and in drugs. We need to make sure class action reform does not unnecessarily restrict the ability of citizens to seek redress for legitimate claims.

While we all may not agree with those in Congress that we need to improve the class action process, we should all agree that it should not be done by shutting State attorneys general out of the system. I believe to do so would circumvent the intent of our Founding Fathers in recognizing that State sovereignty should not be dismissed by Federal action so easily. To that end, I offer this amendment in an attempt to quash ambiguity about the authority of State attorneys general that may exist in this bill.

It should be known that this commonsense amendment in no way impairs the class action reforms as intended in this bill, nor does it in any way expand the authority of State attorneys general. What this amendment does is clarify the existing authority of State attorneys general.

I have heard in the hallways, and as I have gone through the corridors in the Senate in the last few days, that there are some who do not want any amendments to this bill. This amendment, if accepted, I believe is very consistent with the intent of the bill. I believe the authors of the bill did not intend to shut out State attorneys general. So even though some do not want amendments—I think we ought to consider all amendments; some of the amendments are very worthy of consideration. Although some do not want amendments, I think they can vote for this with a clear conscience that this will not change the intent of the bill.

I am a former State attorney general. I understand the important work they do for consumers and the most vulnerable in our society. It is not just my opinion that this amendment is needed. I offer this amendment on behalf of a bipartisan group of 46 State attorneys general who have expressed that it is critically important to all their constituents, especially the poor, elderly, and disabled, that provisions in this legislation be clarified so as not to compromise the traditional law enforcement authority.

I have a letter. Interestingly enough, in the first paragraph of the letter, it says—and these are 46 State attorneys general:

We take no position on the act as a general matter and, indeed, there are differing views among us on the policy judgments reflected in the act.

This is very clear. The attorneys general are split on the underlying act, but they are not split on their authority being called into question with this act.

They say:

Clarifying the act does not apply to and would have no effect on actions brought by State attorneys general on behalf of their respective States and citizens.

I want to talk in just a minute about how State attorneys general are different from private sector lawyers. I will get to that in a minute.

I ask unanimous consent to print in the RECORD this letter signed by 46 State attorneys general, Democrats and Republicans, collectively representing more than 90 percent of the country, who are very concerned that this legislation as it is written will stop them from doing an important part of their jobs.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

NATIONAL ASSOCIATION
OF ATTORNEYS GENERAL,
Washington, DC, February 7, 2005.

Hon. BILL FRIST,
Senate Majority Leader, U.S. Senate, Dirksen Building, Washington DC.

Hon. HARRY REID,
Senate Minority Leader, U.S. Senate, Hart Building Washington, DC.

DEAR SENATE MAJORITY LEADER FRIST AND SENATE MINORITY LEADER REID: We, the undersigned State Attorneys General, write to express our concern regarding one limited aspect of pending Senate Bill 5, the ''Class Action Fairness Act,'' or any similar legislation. We take no position on the Act as a general matter and, indeed, there are differing views among us on the policy judgments reflected in the Act. We join together, however, in a bipartisan request for support of Senator Mark Pryor's potential amendment to S. 5, or any similar legislation, clarifying that the Act does not apply to, and would have no effect on, actions brought by any State Attorney General on behalf of his or her respective state or its citizens.

As Attorneys General, we frequently investigate and bring actions against defendants who have caused harm to our citizens. These cases are usually brought pursuant to the Attorney General's parens patriae authority under our respective consumer protection and antitrust statutes. In some instances, such actions have been brought with the Attorney General acting as the class representative for the consumers of the state. It is our concern that certain provisions of S. 5 might be misinterpreted to hamper the ability of the Attorneys General to bring such actions, thereby impeding one means of protecting our citizens from unlawful activity and its resulting harm.

The Attorneys General have been very successful in litigation initiated to protect the rights of our consumers. For example, in the pharmaceutical industry, the States have recently brought enforcement actions on behalf of consumers against large, often foreign-owned, drug companies for overcharges and market manipulations that illegally raised the costs of certain prescription drugs. Such cases have resulted in recoveries of approximately 235 million dollars, the majority of which is earmarked for consumer restitution. In several instances, the States' recoveries provided one hundred percent reimbursement directly to individual consumers of the overcharges they suffered as a result of the illegal activities of the defendants. This often meant several hundred dollars going back into the pockets of those consumers who can least afford to be victimized by illegal trade practices, senior citizens living on fixed incomes and the working poor who cannot afford insurance.

We encourage you to support the aforementioned amendment exempting all actions brought by State Attorneys General from the provisions of S. 5, or any similar legislation. It is important to all of our constituents, but especially to the poor, elderly and disabled, that the provisions of the Act not be misconstrued and that we maintain the enforcement authority needed to protect them from illegal practices. We respectfully submit that the overall purposes of the legislation would not be impaired by such an amendment that merely clarifies the existing authority of our respective States.

Thank you for your consideration of this very important matter. Please contact any of us if you have questions or comments.

Sincerely,

Mike Beebee, Attorney General, Arkansas; Mark Shurtleff, Attorney General, Utah; Gregg Renkes, Attorney General, Alaska; Fiti Sunia, Attorney General, American Samoa; Terry Goddard, Attorney General, Arizona; Bill Lockyer, Attorney General, California; John Suthers, Attorney General, Colorado; Richard Blumenthal, Attorney General, Connecticut; Jane Brady, Attorney General, Delaware; Robert Spagnoletti, Attorney General, District of Columbia; Charlie Crist, Attorney General, Florida; Thurbert Baker, Attorney General, Georgia; Mark Bennett, Attorney General, Hawaii; Lawrence Wasden, Attorney General, Idaho; Stephen Carter, Attorney General, Indiana.

Tom Miller, Attorney General, Iowa; Greg Stumbo, Attorney General, Kentucky; Charles Foti, Attorney General, Louisiana; Steven Rowe, Attorney General, Maine; Joseph Curran, Attorney General, Maryland; Tom Reilly, Attorney General, Massachusetts; Mike Cox, Attorney General, Michigan; Mike Hatch, Attorney General, Minnesota; Jim Hood, Attorney General, Mississippi; Jay Nixon, Attorney General, Missouri; Mike McGrath, Attorney General, Montana; Jon Bruning, Attorney General, Nebraska; Brian Sandoval, Attorney General, Nevada; Kelly Ayotte, Attorney General, New Hampshire; Peter Harvey, Attorney General, New Jersey.

Eliot Spitzer, Attorney General, New York; Roy Cooper, Attorney General, North Carolina; Wayne Stenehjem, Attorney General, North Dakota; Pamela Brown, Attorney General, N. Mariana Islands; Jim Petro, Attorney General, Ohio; W.A. Drew Edmondson, Attorney

General, Oklahoma; Hardy Myers, Attorney General, Oregon; Tom Corbett, Attorney General, Pennsylvania; Roberto Sanchez Ramos, Attorney General, Puerto Rico; Patrick Lynch, Attorney General, Rhode Island.

Henry McMaster, Attorney General, South Carolina; Lawrence Long, Attorney General, South Dakota; Paul Summers, Attorney General, Tennessee; Rob McKenna, Attorney General, Washington; Darrell McGraw, Attorney General, West Virginia; Peg Lautenschlager, Attorney General, Wisconsin; Patrick Crank, Attorney General, Wyoming.

Mr. PRYOR. Mr. President, I have served with some of these attorneys general, and I can say they come from different ideological points of view and different ways of practicing law. As a whole, they are not taking a position on the bill, but as you can see by this letter, the vast majority of State AGs agree on one point: As the chief legal officers for their respective States, there must be clarification in the bill to make sure they can continue to represent the citizens of their States and carry out their duties as elected officials.

As we all know, attorneys general frequently investigate and bring actions against defendants who have caused harm to their citizens. These cases are usually brought pursuant to the attorneys general parens patriae authority under their respective consumer protection and antitrust statutes. This is an important point. Not all States have parens patriae authority. In fact, the State of Arkansas, when I was attorney general, had very limited parens patriae. In fact, one could argue none at all. We always had to pursue our actions under the Deceptive Trade Practices Act, which is a State statute, and we had specific authority in that statute.

I heard some people say, again, in the hallways here, that all States have parens patriae and therefore we do not need this amendment. But that is not the case. In some instances, such actions have been brought with the attorney general acting as the class representative for consumers in the State. It is my concern, as well as those of 46 attorneys general, that certain provisions in S. 5 might be interpreted to hamper their ability to bring such actions, thereby impeding one means of protecting their citizens from unlawful activity and resulting harm.

It is important to all consumers, but especially to the poor, elderly, and disabled, that the provisions of the act not be misconstrued and that attorneys general maintain the enforcement authority needed to protect them from illegal practices.

I know there are many people who want this body to pass class action reform this year and do not want to ruin its chances by adding too many amendments to the underlying bill. But, as I said a few moments ago, in this case, with this particular amendment, we are not changing the intent of the bill.

I would like to address a falsehood about the amendment that I have heard, and that is that some people have said this amendment would create a major loophole because suits could be brought on behalf of State attorneys general, that some attorneys general may allow their friends to use their names to avoid moving the case to Federal court.

The notion is incorrect and, quite frankly, it is offensive. Let me be clear.

No one can add a State attorney general without his or her express consent or permission. Moreover, attorneys general are statewide elected officials accountable to the same citizens who vote for us. They work hard and take their responsibility as chief legal officers very seriously. State attorneys general would not expend the resources or their reputations to take up a class action they did not believe was worthy of protecting their citizens.

In addition, it should be noted that in many cases, attorneys general are not after the check or the payment in litigation. They are not eyeing the big settlement, although in some cases there are large settlements at the end of the horizon. The primary objective of State attorneys general is not chasing the money but bringing about reform.

Let me be clear on this point. I alluded to this a few moments ago. State attorneys general are fundamentally different from private attorneys. Private attorneys have clients, and they are out there doing what their clients want: trying to get a recovery and trying to make their clients whole. I understand that. That is a good thing. I do not have any problem with that.

State attorneys general are different. Generally speaking—maybe not in every single case but generally speaking, when the State attorney general becomes involved, there is a matter of public policy in the litigation. In fact, I said a few moments ago that the State attorneys general are elected officials. That is not true in every single case. I think there are about 35 elected attorneys general. There are a couple selected by the supreme court or by the State legislature, and some are appointed by the Governor.

Nonetheless, attorneys general have a level of accountability that you do not find in private practice because they are accountable to the people, either the people who elected them or appointed them or selected them for the office. And attorneys general, more than private lawyers, are sensitive to criticism.

I can assure you, the last thing an attorney general wants to read is an opinion by a judge who is criticizing the attorney general for bringing a frivolous lawsuit, criticizing the attorney general for going too far. That is the last thing the attorney general wants to read in the paper.

Also, there is the court of public opinion. The attorney general does not like bad editorials to be written about him or her. They do not like to be out on the street and people questioning their integrity or their sense. So attorneys general have a level of accountability that just does not exist in other areas of practice.

That is an important distinction. As I mentioned a few moments ago, normally cases brought by States involve a matter of public policy, and we can go through a long list of cases and show where the public policy is in the cases and also show how a lot of these cases would not be profitable for the private sector to bring.

Oftentimes there is a matter of fairness and not a matter of money involved in these cases. There are several major examples where State attorneys general have filed a cause of action in State court to protect their citizens or bring reform. However, if we do not act to clarify S. 5, I am concerned this legislation would make it much harder for the attorneys general to do their jobs.

Back in the 1990s, the attorneys general around the country pooled together and sued the tobacco industry for reimbursement of State moneys as a result of disease brought about by smoking. I know in some quarters that is still a very controversial decision. Let me very respectfully remind the Congress that the Congress a year, two or three before this settlement occurred had the chance to enter into a federally mandated global settlement of all claims. That did not happen. The States pursued their case after the Congress failed to act.

This tobacco case resulted in a historic global settlement that drastically altered the way our Nation views and approaches smoking. Money from these settlements was used by the States for youth smoking prevention, to improve health care, educate citizens on the dangers of smoking, and an increased level of treatment for smoking-related illnesses. My State of Arkansas has spent every penny of the tobacco money it has received on health-related issues—every single penny.

Back to the point about the difference in the private sector attorney representing the individual or representing a class versus the attorney general representing the State's interest and the citizens of the State, when you look at the settlement agreement between the tobacco companies and the State, if I recall right, it was about 147 pages long. It was very detailed, very negotiated, a very hard-to-reach settlement.

I believe it was 147 pages long without the attachments, and 91 of those pages, that is two-thirds of the pages approximately, were about the public policy and changing the tobacco industry's practices. Here again, in private litigation it is about getting recovery for one's client, and we understand that, but when the attorney general is involved it is a materially different type of litigation.

I have never seen a private settlement in which two-thirds of the settlement document requires the industry

or the company to change its practices, but that is the type of litigation the attorneys general enter into.

Each State in the tobacco case filed individual suits in their respective State's court alleging fraud. In our particular State, we alleged the Deceptive Trade Practices Act violations and also a number of common law claims. Due to the nature of the claims, if this legislation as it is written would have existed at the time of this case, it may have presented hurdles to the attorneys general that could have prevented a resolution.

In 2001, several State attorneys general took on Ford and Firestone for failure to disclose defects in Firestone tires used on Ford SUVs, of which they should have been aware. These cases were brought again in Arkansas, and other States have similar laws, under our State's Deceptive Trade Practices Act, fraud and consumer protection laws.

Let us make this point in another case. In private causes of action, and there were many relating to the Ford and the Firestone litigation, the parties' and the lawyers' primary concern was trying to make the plaintiffs whole. That is the nature of that type of litigation.

In the attorney general actions, we established a restitution fund and a long series of injunctions against the companies in the way they marketed their products. In fact, some people may have noticed they have seen some new Ford Explorer ads on television in recent weeks. These Ford Explorer ads are due to the attorney general lawsuit, and they deal with the safety of Ford Explorers. All this goes back to the way Ford Explorers were marketed originally. The buyers bought them thinking they were safe under pretty much all conditions, but practice has taught us differently. So I make that point one more time to show how different State litigation is versus private litigation.

Ultimately, the Ford case was settled. However, had these States been required to file separate State cases under their own consumer protection laws, as could be required under this class action bill, those States would have been removed to Federal court. The Federal court would then have been required to become an expert in each State's diverse consumer laws and remedies.

State litigation is different from private litigation, and I think to some degree this amendment is a matter of States rights. In 2000, 26 attorneys general from 26 States brought suit against Publishers Clearinghouse claiming that the company was intentionally preying on the elderly by misrepresenting their sweepstakes award. My colleagues may remember that for years people used to get mail with pictures of celebrities, and in big bold letters it would have your name and say: You have won X number of millions of dollars. Or it would say: Congratulations, millionaire.

Think about it. We do not get those letters anymore. Why? Because the States intervened. The States came in under consumer protection laws and looked at how deceptive those ads were. In fact, in Arkansas when I was in the attorney general's office I would talk to an adult child of a deceased person or an adult child who had put their parents in a nursing home and they would clean out the closets and the living room or whatever and they would find stacks and stacks of magazines that had been ordered through these sweepstakes companies.

Even if one reads everything in great detail, they would find in the fine print that ordering does not increase their chances of winning. Most people do not read all the fine print. Most people thought that ordering did increase their chance of winning, and what happened was people would order the same magazine. People would tell me they would find 10 copies of the same Sports Illustrated or 10 copies of the same Newsweek or Good Housekeeping because these senior citizens ordered to try to win the sweepstakes.

It is sad and unfortunate, but they saw this as a chance they were willing to take to leave a lot of money to their children and grandchildren. So we came in as States and put a stop to that. I think it was 26 States that banded together and put a stop to that.

It was alleged that Publishers Clearinghouse was profiting from this fraud at the expense of the vulnerable elderly. I can recall that these individuals had spent their life savings on these fraudulent sweepstakes. When we got inside of the cases, we found many seniors in Arkansas who had spent hundreds, maybe thousands of dollars trying to win sweepstakes.

Is there someone here who thinks the actions of the attorneys general are out of step with common sense and fairness? In this bill we should make sure we do not take away any existing authority of the attorneys general.

These are just a few examples of the very hard and worthy work by the State attorneys general where they are trying to protect the citizens of their States. I challenge my colleagues to deem the work they do as frivolous or as junk lawsuits because attorneys general around the country have a layer of accountability that does not exist elsewhere. They are accountable to the people. They are accountable to the legislature that makes their budgets. They are accountable to the Governor. They are accountable in the court of public opinion.

I ask my colleagues to support this amendment to this bill for several reasons. One is that the overwhelming majority of State attorneys general, our States' chief legal officers, are concerned about the language of this bill, and we should be concerned about it. Remember, these attorneys general represent the citizens in all of our States. They try to get out there and do the right thing for their citizens.

Secondly, by making this change, we are not obstructing the intent of the bill, but I believe very strongly we are clarifying the authority that already exists.

Third, we should allow our attorneys general to seek State remedies to State problems. I think this is an important piece of this. It goes back to States rights. It goes back to local control and people trying to do things the way they want to handle them in their own States.

So I implore all of my colleagues who are champions of States rights or who want to protect the integrity of the bill and want to leave the tools that currently exist with the State attorneys general, to vote for this amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, a time agreement has been worked out. I ask unanimous consent that the vote in relation to the Pryor amendment occur at 12:15 today, with the time equally divided in the usual form prior to the vote, with no amendment in order to the amendment prior to the vote. Further, the time to be divided begins from when the amendment was sent to the desk. So to amplify that, the time for the Democrats would begin when Senator PRYOR started to speak.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. SPECTER. I know the Senator from Delaware, Mr. CARPER, has another engagement, so I will speak very briefly as the lead opponent of this amendment.

I do oppose the amendment. I appreciate the experience of Senator PRYOR having been attorney general of the State of Arkansas. I did not hold such a lofty position. I was just a district attorney, but I appreciate the reasons he has put forward for the amendment.

It is my suggestion that it is not necessary. When the Senator from Arkansas has enumerated a number of situations where attorneys general protect the interests of the citizens of their State, that can be accomplished even if this bill is adopted. In the first place, the bill provides that if two-thirds of the parties involved are citizens of the State, it stays in the State; if one-third, it goes to the Federal court; and between one-third and two-thirds, it is up to the discretion of the judge.

So even within the confines of the language of the bill, the interests that the Senator from Arkansas has articulated will be protected.

Next, the attorneys general have authority under parens patriae statutes enacted by the many state legislatures to represent the citizens of their State. They are the lawyer for everybody in the State. The Latin phrase of parens patriae has been adopted and that gives them sufficient standing to undertake whatever is necessary.

There is a provision in the Pryor amendment which broadens it substantially by providing that any civil action brought by or on behalf of the attorney general in a State would be excluded so that there would be latitude for the attorney general to deputize private attorneys to bring their class actions and to find an exclusion, which is a pretty broad exclusion, not to use pejorative terms, but a pretty broad loophole.

Those are the essential arguments. I could expand on them, but we have limited time. The Senator from Texas has been in the Chamber since we started the debate, but as I understand it, he has agreed to yield to the Senator from Delaware.

Mr. CORNYN. It is my understanding Senator CARPER would like to speak for about 5 minutes. I ask unanimous consent that I be recognized immediately after Senator CARPER, and then Senator SALAZAR be recognized in that sequence.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SPECTER. I thank the Senator from Texas, and I yield the floor.

The PRESIDING OFFICER. The Senator from Delaware is recognized for 5 minutes.

Mr. CARPER. Mr. President, I thank Senator SPECTER for yielding to me. I say to my friend and colleague from Arkansas, he knows how fond I am of him and how highly I regard him, both in his previous role as attorney general and as a colleague in the Senate.

When I heard of the amendment he was preparing to offer, I stopped and I said to my staff, let's find out if this is something I can support. As many of my colleagues know, we have endeavored to improve this bill over time, and the legislation before us today is a far different bill than was first proposed 7 years ago or even was debated 2 years ago and reported out of committee.

Senator SPECTER has spoken of the option that is available to most attorneys general, an approach called parens patriae, which I understand means ''government stands in the place of the citizen.'' For most attorneys general who wish to file a case on behalf of their citizens against some defendant, they have the opportunity to use parens patriae. For those who do not, in my judgment, they still have the opportunity to use the class action lawsuit.

What we have sought to do over the last couple of years in modifying this bill is to make sure that the class action lawsuits brought by an individual in a State, if they are of a national scope, they would be in a Federal court. If they are not, if they are more of a local issue involving residents of that State, a defendant in that State, or even where there are multiple defendants, but a defendant in that State who has a principal role as a defendant, not just somebody who was sort of pulled out of the air, to make sure there is a real defendant with a real stake in it that has a real financial ability to pay damages, then the legislation that is before us actually permits an attorney general or, frankly, any attorney, plaintiff's attorney, to bring that kind of class action.

The legislation that is before us says if two-thirds of the plaintiffs in a class action lawsuit are from the same State as the defendant, it will stay in the State court, no question. The legislation before us says that if anywhere from one-third to two-thirds of the plaintiffs on whose behalf the class action is brought meet certain standards that are set out in the bill, that can stay in State court as well.

The legislation that is before us today provides exemptions as well for incidents involving a sudden single accident. The legislation before us today also provides exemptions under the Dodd-Schumer-Landrieu language that provide even further opportunities to proceed with a class action lawsuit if the matter that is being discussed is truly a local matter, if most of the people involved both as plaintiffs and defendants are within that State.

The last thing I would say is there are plenty of people on both sides of the aisle who would like to offer amendments. My fear is if any of those amendments were adopted, we invite the House of Representatives to come back and to offer quite a different bill than the compromise that is before us today. To those of us who seek reasonable, modest reforms—and this is a court reform bill, not a tort reform bill—but to those who seek moderate reforms incorporated in this legislation, I did not support this amendment because I think it would simply invite the adoption of other amendments and, frankly, put us in the situation which will end in a conference with the House of Representatives with a bill that is frankly far different than this one and will provide an end product not to my liking and I suspect even less to the liking of those who are opposed to this compromise.

I reluctantly oppose this amendment with that in mind, but it is not something I do easily or lightly.

I thank my friend Senator CORNYN for making it possible for me to have this time.

The ACTING PRESIDENT pro tempore. The Senator from Texas is recognized.

Mr. CORNYN. Mr. President, I first want to say how much I respect and admire the author of this amendment, Senator PRYOR. He and I served together as State attorneys general, he in Arkansas and I in Texas, for 4 years. Our careers overlapped. I agree with him about the important role that attorneys general play when it comes to protecting a State's citizens and a State's consumers. But I think where I part company with my friend Senator PRYOR is, No. 1, this amendment is not necessary to preserve the authority of the State attorney general to protect the State's consumers, and, second, this amendment as worded—and I know this is not his intention—would create a potential loophole big enough to drive a truck through, that could cause substantial mischief that is intended to be prevented by this very bill.

Finally, as Senator CARPER has said, this is a negotiated bill. There are amendments I would like to offer that I think would make it a better bill. But I think we all realize that after many Senators have labored long and hard to try to get us to the point today where we literally have bipartisan support for this compromise, to offer any amendments, and particularly one like this and others that have been filed but not yet called up, would threaten our chance of success. I think that would be a shame because we all agree that the class action abuses we see are very real and are something that do not benefit the American people or consumers in general.

We have seen that some of these egregious abuses of the class action procedure have been used to make certain entrepreneurial lawyers very wealthy when the consumers literally get a coupon worth pennies on the dollar.

I am not opposed to lawyers. Let me say up front I happen to be a lawyer. But I do think that all lawyers, all people, anybody with common sense—some may say that excludes lawyers—but I like to think anybody with common sense recognizes the very real abuses that have occurred in the class action system. We have heard a lot about that. I will not repeat all of that now. I think we all take that as a given.

First, let me allude to the letter signed by—the Senator from Arkansas said 46 State attorneys general from the National Association of Attorneys General, an organization of which I used to be a member and for which I have a lot of respect, both for the people who help run that organization as well as the attorneys general who make up its membership.

I point my colleagues to paragraph 2 in this letter, which I believe makes my initial point which is that this amendment is not necessary to preserve the authority of State attorneys general. Indeed, in the last sentence in the second paragraph these 46 attorneys general say:

> It is our concern that certain provisions of S. 5 might be misinterpreted to hamper the ability of attorneys general to bring such actions, thereby impeding one means of protecting our citizens from unlawful activity and its resulting harm.

In other words, these 46 lawyers, the chief law enforcement officers of these States, make no claim that in fact this bill would impede their authority but, rather, that it might be misinterpreted.

I think it is fair to say that any law that has ever been written is capable of being misinterpreted. That is why we have the court system. But we certainly do not need an amendment like

this to protect the States or the attorneys general against a potential misinterpretation of S. 5, the Class Action Reform bill. That is the function, that is the role of the courts. I think it is very plain that no power of the State attorney general is impeded by virtue of S. 5, or will be once it is signed into law.

Indeed, the Senator from Arkansas alluded to statutes that are typical of every State—deceptive trade practice acts and consumer protection statutes—which in my State and I believe in virtually every other State specifically authorize the attorney general to seek remedies on behalf of aggrieved consumers. This bill certainly would not encroach on that authority. Indeed, he also alluded to common law claims that are asserted by the attorneys general in pursuit of justice for their State's citizens.

We heard the Senator from Delaware talk about the parens patriae doctrine, which is generally recognized as providing the authority to the attorney general to sue on behalf of his State's citizens. I acknowledge, as he said, there are some variations in terms of the court's interpretation in each State about the scope of that doctrine and how much or what kinds of actions might be authorized. But clearly, when State law and the State Constitution specifically provide for the right of an attorney general, a State attorney general, to sue on behalf of his State's citizens, then this bill, when made a law, will not in any way impede that endeavor.

Finally, in terms of the lack of necessity of this bill, the Senator from Delaware pointed out that where a substantial number of a State's citizens are party to a class action and are located in one State, they are carved out by the very terms of this bill so that the case will remain in State court if that is where it was originally filed.

But the real danger in this amendment—and here again I am not suggesting that anyone intended this, but I think it does show the potential for mischief with amendments that have not been the subject of long debate and negotiation—is the language that says:

. . . does not include any civil action brought by or on behalf of the Attorney General of any State.

I am very sensitive to that particular phrase in the amendment because of a, frankly, very tragic experience I had as attorney general of my State. It is a fact that my predecessor as attorney general in the State of Texas is currently in the Federal penitentiary. He is in the Federal penitentiary because he was convicted, based on his own confession, of mail fraud and other violations of law primarily related to his attempt, almost successful, to backdate outside counsel contracts with an old buddy of his, that would potentially entitle his friend to $520 million out of the taxpayers' recovery in the Texas tobacco litigation.

I take no pleasure in bringing this up but merely make mention of it to point out the potential for mischief—not when cases are brought by an attorney general, somebody who is elected by the people, whose future, frankly, is dependent on their dutiful discharge of their obligations and faithful discharge of their duties—but when you carve out suits brought on behalf of the attorney general, which could include any lawyer who any attorney general might choose to hire as outside counsel and, of course, who is unelected and unaccountable to the people. Here, we see the potential for grave abuses.

As I have pointed out, this example was part of the Texas tobacco litigation that was part of a nationwide set of litigation, one which ultimately involved settlements on behalf of several individual States. I want to say, if my memory serves me, that Florida, Mississippi, and Texas filed their individual lawsuits and had individual judgments rendered. But the remainder of the States, including, I believe, the States of the Senator from Arkansas and the Senator from Colorado—they will correct me if I am wrong—they had a collective judgment rendered against the tobacco industry of almost $250 billion, a sum we would recognize, even here in Washington, as being significant.

The problems presented by outside counsel performing the duties of an attorney general under an exception like this just go on and on. My own experience is, again, where outside counsel of the State of Texas claimed the right to $3.3 billion out of the Texas tobacco lawsuit recovery, which by any reasonable measure was an extraordinary fee, one that, when calculated by the hours of work actually put into the lawsuit, has been described as scandalous and unconscionable. The ultimate concern must be the public interest. By accepting an amendment that would place outside the scope of this bill someone bringing a lawsuit on behalf of the attorney general, somebody unelected by the people, not accountable at the polls, we would be creating an environment ripe for fraud.

Let me tell you this: I recall that many of the States' attorneys general believed in good faith that the tobacco industry was responsible for contributing to the death and the illness of hundreds of thousands of Americans each year. Indeed, that is a fact. We lose 400,000 people each year in this country as a result of consuming tobacco products. But the lawsuits brought, which were ultimately settled by the tobacco industry, were brought under the guise of protecting children and protecting the American consumer. We now see that almost $300 billion was paid out but not a single tobacco company is out of business today. Indeed, they continue to make their product, not only in this country but worldwide. There has been no decrease in the number of people who get sick or die as a result of consuming tobacco products in this country each year.

I just have to ask whether it is wise—I suggest it is not—to create an exception, to place outside the protections of the bill not the attorneys general per se but those who seek to bring suits on the attorney general's behalf. I suggest to you the evidence in my State—and perhaps nationwide—indicates that the lack of accountability to the voters, the lack of concern for ultimate welfare of the consumer, and the potential presence of an immediate personal self-serving motive to maximize a huge attorney fee, creates enough opportunity for mischief under this well-intended amendment that it should be voted down on that basis, if no other.

Finally, let me say in conclusion that I know the Senator from Arkansas has filed this amendment in good faith and certainly does not intend any of the results I have suggested here today. But I reiterate what the Senator from Delaware has said, and what I have been told both privately and publicly. If I were to offer amendments which I believe would make this bill better, it would be a poison pill for this litigation. Indeed, I believe that no matter how well intended the amendment offered by the Senator from Arkansas is, it would have that same effect. I don't believe that is in anyone's interest.

I thank the Chair. I thank my colleagues.

I yield the floor.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. SALAZAR. Mr. President, I rise in support of the amendment which has been offered by the Senator from Arkansas. I have a great deal of respect for the National Association of Attorneys General. I also served in that position in the past, as well as the Senator from Texas and the Senator from Arkansas.

Let me very quickly make three points.

First, as has already been alluded to by both the Senator from Texas and the Senator from Delaware, the intent of this bill is to have no effect whatsoever on the powers and duties of the attorneys general to enforce their consumer protection responsibilities. I believe that point should be very much a part of the legislative history of this legislation as it moves forward.

Second, the powers and duties of the attorneys general in our States are very important powers and duties. Those are in those cases powers and duties that result from elections of the people of their States who elected individuals to serve in the capacity of attorney general.

In the context where we are limiting the ability for class actions to be brought under S. 5, that ability of the attorneys general to protect vulnerable consumers is all the more important. It is important for us to make sure as this legislation is being considered that we all understand it is going to have no impact on the powers and duties of the attorneys general.

The letter that came in from our 46 of our former colleagues, interestingly, is an accumulation of almost all of the attorneys general from around the country. It includes Democrats and Republicans alike. It includes Republicans such as my successor, John Suthers, from the State of Colorado, and Democrats such as Tom Miller from the State of Iowa. I think their letter and Senator PRYOR's amendment with respect to some of those are indeed just an effort to make sure the legislative intent that has been talked about here would impact the legislation; that is, that this legislation, S. 5, is not going to have any diminishing effect whatsoever on the powers and duties of the attorneys general to proceed forward under the laws of their States, both constitutionally and also consumer protection laws.

I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I have been working on this legislation for five Congresses, and I would like to get this legislation to the President without any amendments. We have heard from the highest levels of the House of Representatives that if we can pass this bill without amendments, we will be able to get it to the President without going to conference; in other words, the House will adopt it the way we do.

I don't know how many times I would like to have heard that in the House of Representatives. I don't know when I have ever heard that in my entire career. I hope everybody in the Senate has a strong heart. If I didn't have a strong heart, I wouldn't say that. And if I heard it, I wouldn't believe it. I would pass out if the House was going to take something the Senate did without question. We ought to grab the ball and run with it.

Regardless of the merits of the amendment by the Senator from Arkansas, I hope we can defeat that amendment. This amendment would exclude this language from the bill: ''Any action brought by or on behalf of the Attorney General of any State.''

I ask my colleagues not to be fooled. Although this amendment sounds good, and there was a good presentation made by the authors of the amendment, it is potentially harmful and could lead to gaming by class action lawyers. I will explain what I mean by gaming.

First, before I do that, in my judgment, the amendment is not necessary. I will explain. State attorneys general have authority under the laws of every State to bring enforcement action to protect their citizens. Sometimes these laws are parens patriae cases, similar to class actions in the sense that the State attorney general represents the people of that State. In other instances, their actions are brought directly on behalf of that particular State. But they are not class actions; rather, they are very unique attorney general lawsuits authorized under State constitutions or under statutes.

One reason this amendment is not necessary is because our bill will not affect those lawsuits. Our bill provides class actions under that term ''class action'' as defined to mean any civil action filed in a district court of the United States under rule 23 of the Federal Rules of Civil Procedure or any civil action removed to a district court that was originally filed under State statute or rule authorizing an action to be brought by one or more representatives as a class action.

The key phrase there is ''class action.'' Hence, because almost all civil suits brought by State attorneys general are parens patriae suits, similar representative suits or direct enforcement actions, it is clear they do not fall within this definition. That means that cases brought by State attorneys general will not be affected by this bill.

The supporters of this amendment say it is necessary because State attorneys general can bring class actions and those cases might become removable to Federal court. That possibility does not make this amendment necessary. That is because State attorneys general are not required to use class actions to enforce their State laws. If State attorneys general want to recover on behalf of their citizens, they can always bring actions as parens patriae suits under statutes that authorize representative actions or even as direct enforcement actions. Again, such lawsuits will not be subject to this bill.

In addition, our bill has been drafted so as to distinguish between solely truly local class action lawsuits and those that involve national issues. That compromise, which was not part of my original bill, was reached with Senator FEINSTEIN on the home State exception provision as well as further compromises made with Senators DODD, SCHUMER, and LANDRIEU, dealing with the local controversy exception. As a result of these compromises, they will keep then truly local cases where they ought to be—in State court.

Another concern with this amendment is that it is worded in such a way to exclude class actions, not just by State attorneys general but also, in their words, on behalf of State attorneys general. The way this provision is drafted would allow plaintiffs' lawyers to bring class actions and simply include in their complaint a State attorney general's name as a purported class member, arguably to make their class action completely immune to the provisions of this bill. Plaintiffs' lawyers could simply ask State attorneys general to lend their name to a class action lawsuit so as to keep them in the State court.

That creates a very serious loophole in this bill. We should not risk creating a situation where State attorneys general can be used as pawns so that crafty class action lawyers can avoid the jurisdictional provisions of this bill. Our bill would put an end to class action abuses without diminishing the ability of State attorneys general to protect their citizens in State court. This is another way for lawyers to keep cases in State courts.

This is what this bill is all about, to make sure that cases that have national significance are not determined by some county judge in one of our 50 States that end up having national implications. Those cases should be in Federal court and, for the most part, under our legislation will be.

This amendment would seriously create a loophole in the reforms we are trying to accomplish with this bill. I urge my colleagues to join me in opposing this amendment.

Mr. HATCH. Mr. President, I rise in opposition to the amendment offered by my colleague from Arkansas. At best, this amendment is unnecessary. At worst, it will create a loophole that some enterprising plaintiffs' lawyers will surely manipulate in order to keep their lucrative class action lawsuits in State court.

Before I go into more details about the problems with the amendment, I would like to point out that the National Association of Attorneys General does not endorse this measure, nor has it pushed for its inclusion in the class action bill. One would expect that if the current bill somehow impairs the ability of State attorneys general to bring lawsuits on behalf of their citizens, we would have a position from them by now. But we do not, and the association's silence speaks volumes about the merits of this amendment.

Let me first note that this amendment, which excludes from the scope of this legislation any ''civil action brought by or on behalf of, the Attorney General of any State,'' is unnecessary. Let me explain why.

State attorneys general have authority under the laws of every State in this country to bring enforcement actions to protect their citizens. These suits, known commonly as parens patriae cases, are similar to class actions to the extent that the attorney general represents a large group of people.

But let me be perfectly clear that they are not class actions.

There is no certification process, there are no representative class members named in the complaint, and plaintiffs' attorneys who stand to gain millions of dollars in fees. Rather, they are unique lawsuits authorized under State constitutions or State statutes that are brought on behalf of the citizenry of a particular State. These actions are brought typically in consumer protection matters under State law and usually involve local disputes. As such, S. 5 in no way affects these lawsuits.

To underscore, I direct my colleagues to section 1711(2) of the bill which explicitly defines a ''class action'' to mean any civil action filed in a district court of the United States under rule

23 of the Federal Rules of Civil Procedure, or any civil action that is removed to a district court of the United States that was originally filed under a State or rule of judicial procedure authorizing an action to be brought by one or more representatives as a class action.

This statutory definition makes it perfectly clear that the bill applies only to class actions, and not parens patriae actions. Class actions being those lawsuits filed in Federal district court under rule 23 of the Federal rules of civil procedure or lawsuits brought in State court as a class action. Neither of these conditions are met when compared to the nature of a parens patriae action, and consequently, are excluded from the reach of this bill.

What I think the proponents of this amendment are really concerned about is the impact of this bill on State attorneys general if they choose to pursue an action other than a parens patriae action. But this possibility does not make this amendment necessary.

First, attorneys general are not required to use class actions to enforce their State laws and protect their citizens. To the contrary, their main weapon has been, and continues to be, the parens patriae action authorized under State statute.

Second, this legislation has been carefully crafted to distinguish between truly local suits and those that involve national issues. Thus, if an attorney general brings a class action, and that class action involves matters of truly local concern, it will certainly fall under one of the bill's exceptions. On the other hand, if the lawsuit is aimed at an out-of-State corporation for conduct that affects citizens in multiple States, or if the lawsuit is interstate in nature, then that suit should be removed to Federal court. Removal of such a case is particularly appropriate because there would likely be similar suits brought in a number of courts, and one of the central purposes of this legislation is to promote judicial efficiency and fairness by allowing copy-cat class actions to be coordinated in one Federal proceeding.

As I noted earlier, this amendment is not only unnecessary, it actually creates opportunities for gaming. If this legislation enables State attorneys general to keep all class actions in State court, it will not take long for plaintiffs' lawyers to figure out that all they need to do to avoid the impact of S. 5 is to persuade a State attorney general to simply lend the name of his or her office to a private class action. In other words, plaintiffs' lawyers will try to keep interstate class actions in State court by simply naming that State's attorney general at the end of complaint as a cocounsel or of-counsel. Undoubtedly, we will see arguments that if an attorney general merely sends in a letter saying that he/she is sympathetic 10 the action, the lawsuit will be exempt from the bill's provisions. I think this is the very type of forum shopping that S. 5 is supposed to eliminate and we should not be encouraging it now.

Indeed, to give the potential gaming some real life perspective, I direct your attention, Mr. President, to an article from the Boston Globe which reports that the Massachusetts attorney general had made arrangements with private plaintiffs' attorneys to prosecute a consumer-oriented class action against the drug store chain Walgreens. Under the arrangement, the plaintiffs lawyers pocketed hefty fees while the state AG's office received a portion of the settlement money.

But the article reports that this privatization arrangement has drawn criticism because the settlement did very little to benefit consumers. The article reports that too little of the settlement money actually went to consumers, but rather to groups such as Public Citizen, the American Lung Association, and Massachusetts Bar Association. Perhaps more troubling about the article is the alleged campaign contribution ties between the private attorneys who prosecuted these cases and the State attorney general office.

Given the close ties between this State AG and private attorneys, I find that this amendment will only encourage these types of arrangements in the future that do not benefit consumers.

We do not want to risk creating a situation in which State attorneys general can be used as pawns so that class action lawyers can remain in one of their magic jurisdictions and avoid the import of this bill. S. 5 would put an end to class action reform without diminishing in any way the ability of State attorneys general to discharge their duty to protect their citizens—and to do so in State court. I urge my colleagues to vote against this amendment.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. PRYOR. I thank my colleagues for their attention to this amendment. I am encouraged in one way because I know they have spent time with the amendment and studied it, analyzed it. What encourages me is all four who spoke against this—in fact, every Senator who spoke against the amendment—have said that this bill as currently drafted will not alter or limit the existing rights of any State attorney general. That is very good news.

I don't agree with that interpretation. In fact, there are 46 attorneys general, Democrats and Republicans from all over the country, who have written a letter saying they do not agree, or at least they have concern with that interpretation.

I hope when this law, if it passes, S. 5, is challenged, and it will be at some point or be litigated at some point, and a State attorney general tries to pursue some sort of action and there is a challenge saying the State cannot do it, I hope the courts will recognize the legislative history we developed today. The intention of this Senate and the conference is not to limit any existing rights or any existing abilities of the State attorneys general in pursuing cases they may deem appropriate to pursue.

In addition, a number of the opponents, maybe all, have focused on some language in the bill. We need to clarify that language so when we vote on this we will be able to vote from an informed position. The language is ''but does not include any civil action brought by or on behalf of any Attorney General.''

Chairman GRASSLEY and others have pointed to that language and indicated they have some concern with that. I respect that concern.

Let me flesh that out, if I may. In virtually every State, and probably every State, the work of the attorney general's office is too large for one person to do. In other words, the AG himself or herself cannot sign every pleading, cannot attend every hearing, cannot participate in everything. They cannot do it. There are not enough hours in the day and the workload is too heavy. Again, I think every State law does this routinely. I don't know of any exception. What that means is every attorney general in America has an assistant attorney general or deputy attorney general or some other titled person in their office who every single day routinely does things on behalf of the attorney general. It has to be that way.

Under the laws of the States, the attorney general is the one who is ultimately responsible. When a pleading is signed, that signatory—whichever deputy or assistant or attorney general it may be—that person is binding the State's attorney general to certain things in the pleadings.

The attorney general is the officer of the court. The attorney general has ethical responsibilities and ethical duties. I would argue that these ethical duties are above and beyond what is in the private practice of law because that lawyer, as the attorney general, is representing the State he or she was elected or selected to represent. Also, some are concerned that the phrase ''or on behalf of'' may mean that a private sector law firm could be retained by the State to pursue a matter. That is true. That is existing law today. And everybody has said the intention of S. 5 is not to limit or alter or change any authority of the States' attorneys general.

So all that is true. However, in every State I am aware of—I cannot promise this is true in every State, but in every State I am familiar with, there is a process which States' attorneys general have to go through in order to hire outside counsel. I think if we spent 30 minutes looking at various States and the needs of various States, probably 100 percent of the people in the Senate would understand that there may be cases where it might be appropriate to hire outside counsel under certain circumstances.

But there is a process. For example, in Arkansas, we had to go to the State legislature. We had to go to the State legislative committee and get approval to hire outside counsel. We also had to have the Governor sign off on the approval. So we had both the legislative and the executive branch signing off on that decision. Again, I cannot promise every State has that same process, but every one I am familiar with has some sort of process they go through and do that.

The United States is a union of States. We should not think of these attorneys general as attorneys. I tried to make this point several times. They are different than private practice attorneys. These attorneys represent the State. They are the mouthpiece for the State. They do the will of the legislature of the State in all of its various capacities.

Mr. President, may I ask how much time I have?

The PRESIDING OFFICER (Mr. THUNE). Fifteen seconds.

Mr. PRYOR. Mr. President, after the 15 seconds, what will happen? Can I ask unanimous consent to extend it for another, say, 10 minutes?

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. PRYOR. Thank you, Mr. President.

But the only point I was going to make on that is, we are a union of States. We should always see the States' attorneys general as being a little different than private sector lawyers. There is nothing wrong with private sector lawyers. Like I said many times during the course of this debate on this amendment, they are doing their job. They are representing their clients, and that is great and fantastic. That is the way the system works. But the State's attorney general does more. The State's attorney general has more responsibility. When they speak, they speak on behalf of the State. It is kind of like us being here in Washington. Certainly we are everyday citizens like everybody else, but we are elected to come here and represent our States in this great body.

So I will ask my colleagues to try to see States' attorneys general in a different light, in a materially different light, not a slightly different light but in a materially, substantially different light than you see your ordinary attorneys in private practice.

Like I said, some say this amendment is unnecessary because it honors the integrity of the bill. I like that in terms of legislative history. But I also say the counterargument there is: If it is unnecessary and if it does not change the impact of the bill, why not vote on it and allow the amendment to make sure we are all protecting the ability of our States to pursue litigation in the way they have always been able to do that.

Mr. President, I ask for the yeas and nays on my amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

Mr. PRYOR. Mr. President, I yield the floor.

Mr. GRASSLEY. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SPECTER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SPECTER. Mr. President, the time of 12:15 having arrived, we are set for the vote. I move to table the Pryor amendment No. 5, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to the motion. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MCCONNELL. The following Senator was necessarily absent: the Senator from New Hampshire (Mr. SUNUNU).

[Rollcall Vote No. 5 Leg.]

YEAS—60

Alexander	DeWine	Martinez
Allard	Dodd	McCain
Allen	Dole	McConnell
Bennett	Domenici	Murkowski
Bond	Ensign	Nelson (NE)
Brownback	Enzi	Roberts
Bunning	Frist	Santorum
Burns	Graham	Schumer
Burr	Grassley	Sessions
Carper	Gregg	Shelby
Chafee	Hagel	Smith (OR)
Chambliss	Hatch	Snowe
Coburn	Hutchison	Specter
Cochran	Inhofe	Stevens
Coleman	Isakson	Talent
Collins	Kohl	Thomas
Cornyn	Kyl	Thune
Craig	Lincoln	Vitter
Crapo	Lott	Voinovich
DeMint	Lugar	Warner

NAYS—39

Akaka	Durbin	Lieberman
Baucus	Feingold	Mikulski
Bayh	Feinstein	Murray
Biden	Harkin	Nelson (FL)
Bingaman	Inouye	Obama
Boxer	Jeffords	Pryor
Byrd	Johnson	Reed
Cantwell	Kennedy	Reid
Clinton	Kerry	Rockefeller
Conrad	Landrieu	Salazar
Corzine	Lautenberg	Sarbanes
Dayton	Leahy	Stabenow
Dorgan	Levin	Wyden

NOT VOTING—1

Sununu

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 60, nays 39, as follows:

The motion was agreed to.

Mr. SPECTER. Mr. President, I move to reconsider the vote.

Mr. BOND. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. SPECTER. Mr. President, the Senator from Missouri has requested some time in morning business, which is acceptable to the managers. Senator BOND will take 10 minutes in morning business. Then we will proceed to amendments.

I see our colleagues on the other side of the aisle who have risen, who are ready for amendments, so after Senator BOND's 10 minutes we will proceed with the laying down of an amendment.

Mr. KENNEDY. Reserving the right to object, my intention was just to call it up. If I could have the attention of the leader? It was just to call it up, have it before the Senate. We have other Senators who want to speak. Then I will speak on it later, after my colleagues speak.

Could I have the opportunity to call up my amendment and just have it before the Senate?

Mr. SPECTER. Do I understand the Senator from Massachusetts wants 2 minutes?

Mr. KENNEDY. That will be plenty.

Mr. SPECTER. Does the Senator from Missouri agree?

Mr. BOND. I am agreeable.

AMENDMENT NO. 2

Mr. KENNEDY. I ask unanimous consent the pending amendment be set aside and call up my amendment, No. 2, which is at the desk.

The PRESIDING OFFICER. Without objection it is so ordered. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Massachusetts [Mr. KENNEDY], for himself, Ms. CANTWELL, Mr. BIDEN, Mr. LEAHY, and Mr. CORZINE, proposes an amendment numbered 2.

On page 15, strike lines 3 through 7, and insert the following:

''(B) the term 'class action'—

''(i) means any civil action filed under rule 23 of the Federal Rules of Civil Procedure or similar State statute or rule of judicial procedure authorizing an action to be brought by 1 or more representative persons as a class action; and

''(ii) does not include—

''(I) any class action brought under a State or local civil rights law prohibiting discrimination on the basis of race, color, religion, sex, national origin, age, disability, or other classification specified in that law; or

''(II) any class action or collective action brought to obtain relief under State or local law for failure to pay the minimum wage, overtime pay, or wages for all time worked, failure to provide rest or meal breaks, or unlawful use of child labor'';

Mr. KENNEDY. Mr. President, because of other Members' schedules, they want to address this and other issues at this time. I intend to come back and have a more complete statement.

This is about discrimination. It is also about a worker's rights. Those were issues that were never intended to be included in this class action legislation.

I will have more to say about it, but it is an extremely important amendment. I will address the Senate on this issue in a very short period of time.

I thank the floor managers for their courtesies in letting us get this matter up. Hopefully, we will have a chance midafternoon to have a vote on it.

Mr. BOND. Mr. President, I ask unanimous consent I may be permitted to speak as in morning business for up to 10 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The remarks of Mr. BOND are printed in today's RECORD under ''Morning Business.'')

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, the senior Senator from California is on the floor to offer an amendment, titled the Feinstein-Bingaman amendment, which has been the subject of considerable discussion.

As I have said in the earlier portions of the discussion on this bill, I believe class action reform is necessary to move cases into the Federal courts, but I think it is important that there not be any substantive law changes, as I indicated previously on the floor. I had been in support of the Bingaman amendment. The management in opposition will be handled by Senator HATCH.

I yield the floor.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, I thank the Senator from Pennsylvania.

I ask unanimous consent that the pending amendment be set aside.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 4

Mrs. FEINSTEIN. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from California [Mrs. FEINSTEIN], for herself and Mr. BINGAMAN, proposes an amendment numbered 4.

Mrs. FEINSTEIN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To clarify the application of State law in certain class actions, and for other purposes)

On page 24, before line 22, insert the following:

(c) CHOICE OF STATE LAW IN INTERSTATE CLASS ACTIONS.—Notwithstanding any other choice of law rule, in any class action, over which the district courts have jurisdiction, asserting claims arising under State law concerning products or services marketed, sold, or provided in more than 1 State on behalf of a proposed class, which includes citizens of more than 1 such State, as to each such claim and any defense to such claim—

(1) the district court shall not deny class certification, in whole or in part, on the ground that the law of more than 1 State will be applied;

(2) the district court shall require each party to submit their recommendations for subclassifications among the plaintiff class based on substantially similar State law; and

(3) the district court shall—

(A) issue subclassifications, as determined necessary, to permit the action to proceed; or

(B) if the district court determines such subclassifications are an impracticable method of managing the action, the district court shall attempt to ensure that plaintiffs' State laws are applied to the extent practical.

Mrs. FEINSTEIN. Mr. President, what I would like to do is say a few words on behalf of this amendment which is submitted on behalf of both Senator BINGAMAN, who will be on the floor shortly to speak on it, and myself.

As the legislation has been debated, Senator BINGAMAN has raised, I think, a reasonable, valid, and a real concern about whether certain national class action cases may be caught in a catch-22 when they were prohibited from having their cases heard either in State or Federal court, leaving the case to reside in oblivion.

This problem was best described by the Bruce Bromley Harvard Law Professor Arthur Miller in a letter he sent to Senator BINGAMAN. It is a lengthy letter, but I will read one part:

Under current doctrines, federal courts hearing state law-based claims, must use the ''choice-of-law'' rule of the State in which the federal district court sits. These procedural rules vary among states, but many provide that the federal court should apply the substantive law of a home state of a plaintiff, or the law of the state where the harm occurred. In a nationwide consumer class action, such a rule would lead the court to apply to each class member's claim the law of the state in which the class member lives or lived at the time the harm occurred. As noted, most federal courts will not grant class certification in these situations because they find the cases would be ''unmanageable.''

That is the catch-22. You send a consumer class action to Federal court, the judge says it is unmanageable, will not certify it, the case cannot go back to State court and it sits in oblivion. Senator BINGAMAN and I have worked to address this problem. I believe we have.

The original solution proposed by Senator BINGAMAN was a bit too broad because it could impact consumers in States with strong consumer protection laws such as my State of California. What we tried to do, and did, was develop a compromise amendment that provides Federal judges with guidance on how to proceed in these cases, while leaving the judges with the discretion they need to manage their court dockets.

This ensures that national class actions will be heard. They will be certified and claimants in those cases will be more likely to receive the benefit of his or her own State's law.

Let me quickly go over the amendment. The amendment basically provides that:

Notwithstanding any other so-called choice of law rule [which is what is involved here] in any class action over which the district courts have jurisdiction, asserting claims arising under State law concerning products or services marketed, sold, or provided in more than 1 State on behalf of a proposed class, which includes citizens of more than 1 such State, as to each such claim and any defense to such claim—

Here is the amendment:

(1) the district court shall not deny class certification, in whole or in part, on the ground that the law of more than one State will be applied.

That solves the problem of the kind of unanswered question in this bill, Can a class action remain uncertified? The answer is, clearly, no.

(2) the district court shall require each party to submit their recommendations for subclassifications among the plaintiff class based on substantially similar State law; and

(3) the district court shall—

(A) issue subclassifications, as determined necessary, to permit the action to proceed; or

(B) if the district court determines such subclassifications are an impracticable method of managing the action, the district court shall attempt to ensure that plaintiffs' State laws are applied to the extent practical.

This provides guidance to the judge. Secondly, it requires these cases receive certification in the district court.

We believe this is a good solution. It is a significant solution. I hope this Senate will accept that.

Let me say something about this bill as a supporter of a class action bill. This bill is not perfect. It represents the best that can be done to solve what is a real problem in our legal system. I have tried to spend a good deal of time on this issue through Judiciary Committee hearings, personal hearings with both sides, and research and analysis.

As I said in the Judiciary Committee when we marked up the bill, I had a kind of epiphany in one of the hearings a few years ago when a woman named Hilda Bankston testified before our committee. She was the owner of a small pharmacy, with her late husband, in Mississippi. The Bankstons were sued more than 100 times for doing nothing other than filling legal prescriptions. The pharmacy had done nothing wrong, but they were the only drugstore in the county, a county that was so plaintiff friendly that there are actually more plaintiffs than residents. So she, in effect, became a person to sue in that county to enable the forum shopping process to take place.

I will read a letter from her because it is indicative. Let me say this: This bill is not anti-class action as some would have Members believe. This bill tries to fix a broken part of class action which is the ability to venue or forum shop and to make that much more difficult. The Bankston case is a reason for doing that. So many people such as Hilda Bankston, innocent people who have done nothing wrong, get caught up in how these class actions are put together.

Let me quickly read what she told us in committee:

For 30 years, my husband, Navy Seaman Fourth Class Mitchell Bankston, and I lived our dream, owning and operating Bankston Drugstore in Fayette, MS. We worked hard and my husband built a solid reputation as a caring, honest pharmacist . . .

Three weeks after being named in the [first] lawsuit, Mitch, who was 58 years old and in good health, died suddenly of a massive heart attack . . .

I sold the pharmacy in 2000, but have spent many years since retrieving records for plaintiffs and getting dragged into court again and again to testify in hundreds of national lawsuits brought in Jefferson County against the pharmacy and out-of-state manufacturers of other drugs . . . I had to hire personnel to watch the store while I was dragged into court on numerous occasions to testify.

I endured the whispers and questions of my customers and neighbors wondering what we did to end up in court so often. And, I spent many sleepless nights wondering if my business would survive the tidal wave of lawsuits cresting over it . . .

This lawsuit frenzy has hurt my family and my community. Businesses will no longer locate in Jefferson County because of fear of litigation. The county's reputation has driven liability insurance rates through the roof.

No small business should have to endure the nightmares I have experienced.

This amended Class Action Fairness Act goes a long way toward stopping forum shopping by allowing Federal courts to hear truly national class action lawsuits. The Constitution itself states that the Federal judicial power ''shall extend . . . to controversies between citizens of different States.''

Yet an anomaly in our current law has resulted in a disparity wherein class actions are treated differently than regular cases and often stay in State court. The current rules of procedure have not kept up with the times. The result is a broken system that has strayed far from the Framers' intent.

I believe this bill is a well-thought-out, reasoned and an easily read bill. I have actually read it three times—as solution to this problem it does a number of things.

First, the bill contains a consumer class action bill of rights to provide greater information and greater oversight of settlements that might unfairly benefit attorneys at the expense of truly injured parties.

For instance, the bill ensures that judges review the fairness of proposed settlements if those settlements provide only coupons to the plaintiffs. It bans settlements that actually impose net costs on class members. It requires that all settlements be written in plain English so all class members can understand their rights. And it provides that State attorneys general can review settlements involving plaintiffs.

All these things are important guarantees for the plaintiff, for the individual, for the aggrieved party. I believe it makes the class action procedure much sounder for the consumer.

Secondly, the legislation creates a new set of rules for when a class action may be so-called removed to Federal court. These diversity requirements were modified in committee and again since then to make it clear that cases that are truly national in scope should be removed to Federal court. But equally important, the rules preserve truly State actions so that those confined to one State remain in State courts.

Now, the original bill that came to the Judiciary Committee said all class actions where a substantial majority of the members of the class and the defendants are citizens of the State would be moved to Federal court. We changed this. I actually offered an amendment in committee that changed this definition to split the jurisdiction into thirds. Now there is less ambiguity about where a case will end up, and more cases will actually remain in State court.

I think that is important to stress: more cases will actually remain in State court. This is an important compromise.

If more than two-thirds of the plaintiffs are from the same State as the primary defendant, the case automatically stays in State court.

If fewer than one-third of the plaintiffs are from the same State as the primary defendant, the case may automatically be removed to Federal court. Remember, this happens only if one of the parties asks for removal. Otherwise, these cases, too, remain in State court.

In the middle third of the cases, where between one-third and two-thirds of the plaintiffs are from the same State as the primary defendant, the amendment would give the Federal judge discretion to accept removal or remand the case back to the State based on a number of factors which are defined in the bill.

I would hope Members would take the time to read the bill. I think it is an important bill. I think to a great extent it has been maligned in that people have chosen to interpret it as anti-class action. I think if those of us—and it is interesting that some of us on this bill are not attorneys; Senator GRASSLEY, Senator KOHL, certainly myself from the Judiciary Committee—I think if you are not an attorney, you can look at the forest and not really get caught up in some of the process trees of that forest, and you can make an assessment whether the forest well serves class action cases.

I think these changes, and particularly the diversity requirement changes, make this a much sounder way to make a decision as to whether a class action should remain in State court or is truly national in scope and, therefore, should be heard by the Federal court.

I commend to this body the consumer bill of rights. It is very clear in reading the bill that protections are given for coupons. There is review for settlements. The consumer is taken very seriously. I think the system is improved.

Now, let me speak just for a moment to this business: Well, you have to take the bill as is or forget it, there is not going to be a bill. There is an arrangement with the House to take the bill if it is exactly as is.

Well, in many complicated issues, there are dilemmas or problems or issues or corrections that need to be made which appear as the legislative process takes place. And that is what has happened with this bill. In certain areas of concern, where the law may be silent, and case law may be conflicting, I think it is important to clarify the law. That is what the Feinstein-Bingaman amendment does. There is a hole there. The issue is governed by old case law. What we do is, in essence, codify that so we make clear the discretion that the judge has.

Most importantly, we make clear that a bona fide class action going to Federal court is not going to fall into oblivion because a judge is going to say, Oh, my goodness, there are so many State laws at issue here I can't possibly manage the case, and, therefore, that judge does nothing and the case goes nowhere.

So I think we have worked out a good solution. I know Senator BINGAMAN was here on the Senate floor. I would say to the Senator from Pennsylvania, I know he is desirous of saying a few words. So perhaps if his staff is listening, they will urge him to come to the floor. Otherwise, Mr. President, I thank the Chair, and I thank the chairman.

I yield the floor.

Mr. GRASSLEY. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BINGAMAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BINGAMAN. Mr. President, I rise to express my strong support for Senator FEINSTEIN's amendment. The amendment will provide courts with guidance as to how to manage large multistate class actions in Federal court. This amendment addresses a flaw in the underlying legislation that, if left uncorrected, could leave many properly filed multistate consumer class actions without a forum in which those cases could be heard.

I had prepared an amendment that would have reaffirmed the discretionary authority of a judge to select the law of one State, as is currently permissible under the Constitution, and reaffirm the right of the judge to do that instead of denying certification for large multistate consumer class actions. There were some concerns raised by my colleagues, and I have agreed to withhold that amendment and lend my support to the Feinstein compromise approach. I believe the Feinstein compromise will accomplish what I intended to address in my amendment; that is, to make sure injured consumers have their day in court.

By amending the diversity jurisdiction rules, the Class Action Fairness Act of 2005 will give almost exclusive jurisdiction to the Federal courts to hear class action cases. The proponents of the legislation argue that such changes are necessary due to abuses that are occurring in a handful of State courts. Although the bill makes changes to other aspects of class action litigation, such as coupon settlements, this procedural removal of cases from State court to Federal court should be the focus of our scrutiny. This goes to the core of the 10th amendment of the Constitution that preserves the right of a State to protect its citizens. While this shift may be necessary in certain cases, it should not be taken lightly, as we will be taking away the ability of States to hear cases involving injuries to their citizens that are in violation of the State law. This is clearly a fundamental change in jurisprudence.

Class action suits have long provided a means for individuals to band together to seek a remedy when they have collectively been damaged in a manner that is significant but would not be economical to advance on their own. These actions empower those citizens who would be left without redress, absent the collective effort of others. This system has provided a necessary balance to a system weighted toward those with the means to defend their actions in court. The suits also take much of the pressure off of a State attorney general. The State attorneys general are not able to investigate and seek remedies for all the citizens who have been damaged or hurt by business in and outside of a State. Class actions reduce the need for overly burdensome regulations and laws that would be necessary if it were to be forced to limit the discretion given to businesses to operate in a responsible manner.

Finally, class action litigation protects our citizens from future injuries by putting an end to certain acts of corporate malfeasance and negligence. Although there have been abuses on occasion, the benefits of class action litigation should be evident. Under current law, an individual has the right to participate in a class when a number of people have been injured in a similar fashion by the same defendant. Once the class has been created, if the injury is based on a violation of State law—and many are, as there are really no general consumer protection laws—the class representative generally has the option of filing either in State court or Federal court. In this respect, a class action is similar to any action that is filed in court; that is, the plaintiff is the master of his or her claims.

The proponents of this legislation have argued that the basic goal of the legislation is to move these large class actions to Federal court. For instance, Stanton D. Anderson, executive vice president and chief legal counsel for the U.S. Chamber of Commerce, wrote in the Philadelphia Inquirer, dated February 27, 2004, that:

> [t]he Class Action Fairness Act would simply allow federal courts to more easily hear large, national class action lawsuits affecting consumers all over the country.

Similarly, in testimony before the Judiciary Committee on July 31, 2002, Walter Dellinger stated:

> [t]he principal purpose and effect of the [class action] bill is undeniably modest: it merely adjusts the rules of diversity jurisdiction so that certain large multi-party cases—those with true nationwide compass, affecting many or even all states at once—will be litigated in the federal courts rather than in the courts of just one state (or county) or another.

Suffice it to say, the new Federal diversity statute for purposes of class action will accomplish this as very few, if any, cases will meet the standards necessary to remain in State court. The operative question is, then, What will happen to these cases once they are in the Federal court system? If we look at the past decade or so, we note an interesting pattern. Although some State courts have certified these large multistate class actions, the Federal courts have not. In fact, six U.S. circuit courts of appeal—the Third Circuit, the Fifth Circuit, the Sixth Circuit, the Seventh Circuit, the Ninth Circuit, and the Eleventh Circuit—and at least 26 Federal district courts have denied class certification in multistate consumer class actions. Except for a 1986 Third Circuit decision which has since been narrowed to only its facts, no U.S. circuit court of appeals has granted class certification in such a case. At the same time, at least seven different States have certified large multistate consumer class actions.

Under rule 23(b)(3) of the Federal Rules of Civil Procedure, an action ''may be maintained as a class action if the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members.''

Because class action lawsuits involving fraud and deceptive sales practices or sales of defective products allege violations of State consumer protection statutes or common law, there is always a possibility that the laws to be applied will be different. If a court determines that they must apply the laws of different States to different members of a class action, they often find that questions of law common to the members of a class do not predominate. That renders the adjudication of the case as a class action unmanageable, and they deny class certification. This denial is effectively the end of the action. It is not hard to understand why State courts are the forum of choice for these large class actions.

The proponents of this legislation are aware that Federal courts do not certify these large class actions. In fact, in most cases, they argue this very point in court.

For example, in re Simon, the second litigation, which was before the U.S. Court of Appeals for the Second Circuit, the Chamber of Commerce opined:

> . . . it is nearly a truism that nationwide class actions in which the claims are subject to varying State laws cannot be certified because they are simply unmanageable.

Obviously, these arguments have been persuasive before the Federal courts. In re the Ford Motor Company ignition switch products liability litigation that was in the U.S. District Court for New Jersey, that court stated:

> [P]laintiffs' first cause of action contends that Ford breached an implied warranty of merchantability under each of the many States' laws that govern this action. Variations among these States' laws, however, preclude classwide adjudication of plaintiffs' claims.

This case involved a defective ignition switch that caused it to fail. It has been claimed that this failure may have resulted in as many as 11 deaths and 31 injuries, not to mention almost a billion dollars spent by consumers to replace the defective product. The case was ultimately settled, but it was only settled after a State court in California agreed to certify a class.

Senator FEINSTEIN's amendment makes sure that by moving these cases to Federal court, we are not pushing them into a forum that will fail to hear those cases because too many State laws apply.

The amendment requires the parties to submit plans as to how the case could be managed by dividing it into subclasses based on the similarity of the State laws that would need to be applied. The judge would then have the discretion to divide the class into subclasses or use some other manner that ensures that the plaintiffs' State laws are applied.

Under the Feinstein amendment, the Federal court is not required to divide the class into subclasses; it is simply discretionary. It can still follow the State's choice of law rules, or use any other means permissible to ensure that the plaintiffs' State laws are applied to the extent practicable.

If we are going to take away the right of State judges to hear a class action, it is incumbent upon us to make sure the Federal judge is not able to not certify the class because too many State laws would apply. That would be an unfair result.

I have heard many Members argue that a deal is a deal; therefore, Members who support the bill, including those who were able to get changes made to the bill before it was brought to the floor, should be precluded from supporting any amendment, including this amendment. I remind my colleagues that although this legislation has been around for years, there has not been a single amendment to improve this legislation that has been voted on on the floor of the Senate prior to this week.

The stated intention of the proponents of this bill is to avoid conference with the House and to have that Chamber pass the bill exactly the way it passes the Senate. While they argue this is a reason to not support

amendments, I would argue the opposite. Because we know this is the only opportunity for any Member of Congress to amend this legislation, it is imperative that we remain openminded to the few amendments that are going to be offered and debated on the bill.

In the 22 years I have been in the Senate, I do not recall a single piece of legislation that could not have benefited from input from all interested Members of the Senate. The Founding Fathers of our country created a legislative branch that is intentionally deliberative and subject to the repetitive processes of debate and amendment.

I remind my colleagues of the language included in last year's nonamendable Omnibus appropriations bill that would have allowed staff from the appropriations committees to review taxpayers' tax return information. That one provision almost derailed the entire spending bill for our country. Clearly, if Members had been presented with an opportunity to review the bill on the floor, to amend that bill, we could have avoided that problem.

As elected officials, we have a responsibility to the public to do our best to improve legislation before it becomes law, which I believe argues for Members to consider each amendment with an open mind. If my colleagues disagree with this amendment, then I encourage them to vote against it. However, if they agree with me that this catch-22, which is in the current bill, should be corrected, then I hope they will vote for this Feinstein amendment, regardless of whether you previously stated support for the overall bill.

I would like to acknowledge and thank the chairman of the Judiciary Committee, Senator SPECTER, for his support of my amendment and what I understand to be his support of the Feinstein amendment. No one could debate the chairman's dedication to getting this bill passed. Yet he agrees that the legislation would be improved by correcting the problem we have identified.

Substantively, one of the arguments that was raised by proponents of the bill is that courts have been certifying classes in these large multistate class actions, even though all of the circuits I mentioned before in numerous district courts have denied certification on the ground that the case is unmanageable. The cases enlisted by proponents of the bill in defense of their claim that cases have been certified are cases involving a Federal question or certifications of a class for purposes of settlement. These types of certifications are entirely different than the cases we are referring to; that is, cases involving violations of State law for purposes of a trial. The only way these cases are going to get to the settlement phase is if there is the possibility that a case could be taken to trial, if necessary. It is an important distinction.

Again, I point to this in re Simon II litigation where the Chamber of Commerce argued against certification, stating that it is nearly a truism that nationwide class actions in which the claims are subject to varying State laws cannot be certified because they are simply unmanageable.

As I mentioned before, this is not just an abstract situation. There are over 300,000 homeowners in Mississippi, Louisiana, Florida, and Texas who have been compensated for defective siding they had purchased for their houses. When this case was brought before the Federal court, it was not certified, in part because the court could not ''imagine managing a trial under the law of 51 jurisdictions on the defectiveness of masonite siding.'' Because an Alabama State court agreed to certify the case for trial, the case was settled, and these homeowners were compensated for their damages.

Proponents of the legislation also argue that a class denied certification would be free to refile its cases in either State or Federal court. Based on the underlying legislation, the State court cases, almost without exception, would be removed again to the Federal court, and once in Federal court, the case would be sent to the same Federal court that failed to certify the class in the first place due to the procedure for consolidation and the operation of the multidistrict litigation panel.

This MDL, multidistrict litigation panel, streamlines large, unwieldy multidistrict litigation involving the same parties and the same facts when those cases are filed in Federal courts. This panel of seven judges appointed by the Chief Justice of the Supreme Court determines which cases pending in Federal court should be transferred to a single district court for purposes of hearing and ruling on pretrial matters, including the matter of class certification.

The proceedings can be initiated by the MDL panel or by any party involved in one of the actions pending in a district court. All cases of a similar nature in Federal court, including those filed after the consolidation, are affected and subject to being transferred. Once a transferee court has been selected, it rules on all pretrial motions, including class certification, but will send the cases back to the transferor courts for trial, assuming that the case has not settled or been dismissed. All future cases involving similar claims and similar parties are automatically sent back to the same transferee court for any future actions.

Class actions by their very nature are large cases and they are affected by the ability of the MDL panel to consolidate, as there are generally different cases pending in district courts throughout the country. Under current law, a class based on claims of State law violations can avoid this consolidation by remaining in State court, but this will no longer be the case after this bill becomes law. Instead, plaintiffs who go through the consolidation process and are not certified will not refile these cases since they would ultimately be back before the same judge who failed to certify the class in the first place.

Finally, the proponents of the bill have argued that taking away the right of a judge to deny certification based on too many States' laws is a violation of due process and is anticonsumer. It seems implausible to me that an amendment that would ameliorate the impact of denying States the right to hear certain cases could be considered either a violation of due process or anticonsumer. I believe the amendment of the Senator from California is fair. It is a reasonable approach to dealing with a serious problem created in the underlying legislation.

As Chairman SPECTER stated earlier in the week, this legislation is intended to change the procedure for class actions and not the substantive law. Without Senator FEINSTEIN's amendment this bill could effectively limit the substantive rights of citizens to obtain a remedy for modest damages when a defendant has injured many in a similar fashion. I hope my colleagues will join me in supporting the Feinstein amendment.

I have a letter I received from Professor Arthur Miller at the Harvard Law School. He has been very helpful to me and to other Senators in trying to help us understand the seriousness of the issue and the importance of remedying this through proposals such as the Feinstein amendment. I ask unanimous consent that the letter be printed in the RECORD at the end of my remarks.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

HARVARD LAW SCHOOL,
Cambridge, MA, June 17, 2005.

Hon. JEFF BINGAMAN,
U.S. Senate,
Washington, DC.

DEAR SENATOR BINGAMAN: I am happy to respond to your letter of June 14 asking for my views of your proposed ''choice of law'' amendment to the proposed ''Class Action Fairness Act'' (S. 2062). After decades of teaching, practicing, writing, and serving the Judiciary in various public service capacities in the fields of civil procedure, complex litigation, and class actions, I very interested in any federal legislation affecting class action lawsuits, and particularly, in the possibility of making this particular legislation fairer and more balanced.

In general, S. 2062 would place in federal court most class actions that involve more than $5 million in losses and more than 100 class members, and in which any defendant is a citizen of a state that is different from that of any member of the plaintiff class. In effect, the proposed legislation would federalize all class actions of any significance. I believe that this radical departure from one of the most basic, longstanding principles of federalism is a particular affront to state judges when we consider the unquestioned vitality and competence of state courts to which we have historically and frequently entrusted the enforcement of state-created rights and remedies. I recognize, however, that apparently a majority of the Senate supports the idea of moving most class action lawsuits from state to federal court. If

that is the case, your proposed amendment is essential to ensure that, once class actions were moved into the federal courts, these cases not be consigned to oblivion. That real possibility goes beyond the just mentioned intrusion on federalism principles and raises legitimate concerns about the fairness and balance of S. 2062.

Proponents of S. 2062 argue that federal courts are the more appropriate forum for lawsuits involving plaintiffs from multiple states. They assert that the goal of the bill is to ensure that nationwide cases will ''be litigated in the federal courts rather than in the courts of just one state (or county) or another.'' Of course, that statement ignores the fact that state courts have been trusted to adjudicate multi-state controversies since the foundation of the Nation. Moreover, the truth is that these cases are not litigated in federal court; most commonly they are denied class certification. The proposed legislation would magnify that reality.

Federal courts have consistently denied class certification in multi-state lawsuits based on consumer laws as well as other state laws. This fact is acknowledged by most class action practitioners and experts, regardless of their position on class action policy issues. Just last year, the U.S. Chamber of Commerce—the leading proponent of S. 2062—filed an amicus curiae brief in the U.S. Court of Appeals for the Second Circuit urging the court to overrule a distinguished district court's class certification decision because ''. . . federal courts have consistently refused to certify nationwide class actions in product defect cases because the need to apply the laws of many different states would make such a sprawling class action unmanageable.'' The Chamber went on to conclude, ''. . . it is nearly a truism that nationwide class actions in which the claims are subject to varying state laws cannot be certified because they are simply unmanageable.'' On this point, the Chamber is correct—not a single Federal Circuit Court has granted class certification for such a lawsuit, and six Circuit Courts have expressly denied certification.

It is not surprising that federal courts are reluctant to grant certification to multi-state class actions based on state consumer protection laws. After all, these are laws with which the federal courts generally are not familiar or comfortable. Imagine the discomfort of a federal judge, then, when confronted with a case involving tens of thousands of individuals from all fifty states and state laws that at least superficially appear to be different. Moreover, our federal courts have limited resources and are responsible for adjudicating a tremendous array of substantive matters. State courts, on the other hand, are far more comfortable handling cases involving state contract or tort law and are, therefore, more inclined to try to find a way to hear and resolve those cases.

Your proposed amendment will provide guidance to federal judges that will enable more multi-state consumer class actions to be certified in federal court and, hopefully, resolved on their actual merits. If S. 2062 is enacted without the amendment, class action lawsuits brought on behalf of consumers who have been defrauded or injured because of corporate misconduct that affected people in multiple states will continue to be nonviable.

The following is a brief description of how federal courts currently treat class actions based on different state laws. It will elucidate the need for an amendment like yours in the event that Congress does indeed give federal courts exclusive jurisdiction over class actions that involve solely state law claims.

The rationale that many federal courts use for refusing to certify consumer class actions that involve solely state law claims on behalf of citizens from different states rests on the requirement of Federal Rule of Civil Procedure 23(b)(3), which governs most consumer class actions brought in federal court. Rule 23(b)(3) says, in pertinent part: ''An action may be maintained as a class action if . . . the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members.'' When courts feel compelled to apply the laws of different states to different members of a class action, they often find that questions of law common to the members of the class do not predominate, leading them to conclude that proceeding on a class action basis would prove to be unmanageable, and they deny class certification.

Federal courts often conclude they must apply the laws of different states to different members of a class action after they engage in a complex ''choice of law'' analysis to determine which state's law to apply to the claims of the class members. Under current doctrines, federal courts hearing state law based claims must use the ''choice-of-law'' rule of the state in which the federal district court sits. These procedural rules vary among states, but many provide that the federal court should apply the substantive law of the home state of the plaintiff, or the law of the state where the harm occurred. In a nationwide consumer class action, such a rule would lead the court to apply to each class member's claim the law of the state in which the class member lives, or lived at the time the harm occurred. As noted, most federal courts will not grant class certification in these situations because they find that the classes would be ''unmanageable.''

Your amendment would allow a federal court to choose not to follow the choice-of-law rule of the state in which the court is located. The federal judge could instead make the case more manageable by choosing the law of one state with sufficient ties to the underlying claims to meet the choice of law requirements that the Constitution demands be met. That state often will be the state in which the defendant's headquarters is located, or where the product was designed or manufactured, or where the marketing materials were conceived, or where the particular business practice being challenged was developed or executed.

If the federal district judge chooses to reject the option of applying one state's law to the case, your amendment ensures that the judge does not deny class certification on the sole ground that the laws of more than one state would apply to the action. This protects consumers from being caught in the ultimate Catch-22 situation—their lawsuit is in federal court because the class includes people from many states and Congress has said that is the only place the class can go, but then, the federal court will not grant class certification precisely because the class involves citizens from multiple states. That simply violates the most basic principles of citizen access to the courts. I believe that your amendment strikes the appropriate balance among the interests of the class members, defendants, and the courts. Most important, it will ensure that S. 2062 does not lead to the unintended consequence of robbing from consumers their only avenue to seek redress from corporations that violate the law.

If S. 2062 passes without your amendment, the only outlet for injured consumers will be single-state class actions. But that would fly in the face of what the proponents of the bill are apparently trying to achieve, which is to consolidate nationwide class actions in one forum, federal court, so that businesses do not have to face multiple lawsuits throughout the country. What is worse, the only plaintiffs who will he represented and compensated through single state actions are those from highly-populated states, where the damages suffered by the class members will be large enough to finance a costly and typically risky class action lawsuit. This may be a practical and viable solution for those who live in a state like California or Texas. But it will leave millions of consumers who have been harmed in less-populated states, such as your home state of New Mexico, without relief.

Your amendment effectively and efficiently allows multi-state class actions in consumer cases to be certified in federal court. It actually accomplishes what the bill purports to achieve—giving harmed consumers from multiple states one federal forum in which to seek relief. Under your amendment, the federal judge will have the discretion to apply one state's law, as long as that is constitutionally permissible. Or the judge may choose to manage the case in a different way, perhaps by grouping states together that have similar laws into subclasses or by using exemplar or test cases or by resorting to the increasingly sophisticated tool chest of management procedures our courts have developed. In any event, the judge may not dismiss a case on the ground that the litigation is unmanageable simply because multiple state laws apply. The judge does, of course, maintain the discretion to refuse to certify the class on other grounds. The amendment is quite modest, but it does restore some balance and fairness to the bill by increasing the likelihood that citizens will have access to the courts to present their grievances.

Your letter to me notes that proponents of the bill are portraying this amendment as anti-consumer. Such a characterization could not be further from the truth and is little more than rhetoric. Indeed, in my judgment, it is S. 2062 that is anti-consumer.

As noted above, under current practice, federal courts rarely certify nationwide consumer class actions. In almost every instance in which allegations of wrongdoing injuring large numbers of consumers have been brought, the decision to deny class certification will eviscerate any opportunity for the victims to seek redress. The individual members of the class simply will not suffer losses large enough to justify bringing suit solely on one person's behalf. It is hardly anti-consumer to provide a mechanism to enable federal courts to certify cases and afford consumers an opportunity to have their grievances heard.

Thus I believe your amendment provides a balanced solution. It allows injured consumers a better chance of getting their day in court. And it provides federal judges with a reasonable way to manage multi-state class actions based on consumer laws.

You also note that proponents of the legislation have suggested that this amendment is unconstitutional. There is no basis for such an assertion.

Your amendment expressly honors the Constitution by stating, ''the district court may apply the rule of decision of one state having a sufficient interest in the claim that the application of that state's law is permissible under the Constitution.'' Although the amendment allows a federal judge to apply one state's law, it does so only when that is constitutionally acceptable.

The constitutional limitation on applying a single state's law to a multi-state action is derived from *Phillips Petroleum Co.* v. *Shutts et al.*, 472 U.S. 797 (185), a case that I argued on behalf of Phillips Petroleum Co. before the Supreme Court. The Court held that ''for a State's substantive law to be selected in a constitutionally permissible manner, that

State must have a significant contact or significant aggregation of contacts, creating state interests, such that choice of its law is neither arbitrary nor fundamentally unfair.'' Id. at 818 (internal cite and quotations omitted). Thus, as long as there are ''significant contacts'' and the choice of law is not ''arbitrary'' or ''fundamentally unfair,'' then a single state's laws may apply to a multi-state class action. Neither party can object to that.

Because your amendment effectively codifies Shutts, it is constitutional. If there is a multi-state class action in which no single state's law meets the constitutional standard set forth in Shutts or if the judge does not choose to apply a single state law that does meet the constitutional criteria, then the judge may follow the choice of law rules of the state in which the district court sits. Part (b) of the amendment does not implicate the Constitution in any way. It merely provides that if the judge does not apply a single state law, then he or she may not deny certification under Rule 23 on the narrow ground that multiple states' laws apply to the case and make it unmanageable. It encourages federal judges to try to go forward and reach the merits of the dispute.

Thus, your amendment gives federal judges appropriate guidance about how to address multi-state consumer class action lawsuits. It does not mandate a result or tie their hands. This ability to make a case more manageable will allow at least some multi-state consumer class actions to be heard, rather than to be denied certification. As the California State Supreme Court aptly recognized, defendants should not be able to keep ill-gotten gains ''simply because their conduct harmed large numbers of people in small amounts instead of small numbers of people in large amounts.'' *State* v. *Levi Strauss & Co.*, 41 Cal.3d 460 (1986). Yet that is where this bill as written will lead us, and that is extremely bad policy.

Unless the Senate wants to enact legislation that, as a practical matter, eliminates multi-state class actions, it should not pass S. 2062 as it is written. Under S. 2062, multi-state class actions in consumer law cases, a vital mechanism for promoting social justice, giving people access to the courts and dealing fairly with our citizenry, will become an artifact, a thing of the past. At a minimum, the Senate would be wise to adopt your amendment, which would allow plaintiffs to have their day in federal court; after all, the proponents of the legislation argue that is the goal of the bill.

Thank you again for your willingness to address this important issue. If you have any additional questions about S. 2062 or the benefits of your amendment, I would be happy to assist you further.

Sincerely yours,

ARTHUR R. MILLER,
Bruce Bromley Professor of Law.

Mr. BINGAMAN. I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. CHAMBLISS). Without objection, it is so ordered.

The Senator from Iowa is recognized.

Mr. GRASSLEY. Mr. President, when I spoke prior to Senator PRYOR's amendment, I made a pitch that I want to repeat about the opportunity we have now, after four Congresses—this is the fifth Congress—to get this bill to the President. It has passed the House so many times, and we have never been able to get it to finality in the Senate. We have the House in position now, even after all of these compromises we have made which have diluted the bill more than I would have liked to have done, of passing a bill the leadership in the House of Representatives tells us they will take the way we pass it and send it to the President as long as there are no changes, and this assurance about no changes comes from two standpoints.

One, in the previous Congress we made compromises to get Democratic votes with the idea that once those changes were made and we got this bill through the Senate, they would not be changed in the House. We also got the assurance from the House that they would not change it, even though the House has passed much stronger legislation a couple of times. So there is an assurance in this body for people who would rather not pass strong legislation but they know there needs to be some changes in class action regime, to make some modest changes, and make sure that what they agree to will be what gets to the President, and then the House saying now for a new Congress they will pass this legislation without amendment.

So every Democrat who has made a compromise with us so we can get this bill behind us can be satisfied that they will not be nickeled and dimed to death.

Obviously, not all Democrats are satisfied with this sort of agreement and that is their right as individual Senators to try to change it more. But as I said before, any changes in this bill negate both promises that have been made. It means the promise to go through the House will not be kept because the bill has been changed in the Senate, and then for those Senators who got the assurance from me that this bill would not be changed in the House so that they were not nickeled and dimed away with their compromises are going to lose the opportunity of getting what they want without the assurance that somewhere else in the legislative process, probably conference, there might be a much stronger bill than they want.

This bill was originally introduced in the 105th Congress, then the 106th Congress, then the 107th Congress. We moved it in the 108th Congress. Now we are here in the 109th Congress. Almost everybody seems to believe there is some reform that needs to be done in the class action tort regime. This bill is it.

Now we have amendments. We defeated the amendment of Senator PRYOR. We had an amendment by Senator BINGAMAN that we were going to deal with, that would have destroyed this compromise. There must have been a belief on the part of the people behind the Bingaman amendment that it would not go, so instead of the Bingaman amendment we have in front of us a Feinstein modification of the Bingaman amendment.

I am in the same position I was with the amendment of Senator PRYOR, asking people to defeat the Feinstein-Bingaman amendment. I will be very precise why that needs to be done. But the substance of the amendment and my arguing against the substance of the amendment should not carry as much weight with my colleagues as my pleading with them that we defeat all amendments because this bill has been compromised to satisfy a supermajority of Senators—not a bare majority, a supermajority.

So I take this opportunity to speak out against the Feinstein-Bingaman ''choice of law'' amendment, and I urge my colleagues to oppose it. Pure and simple, this amendment blows a hole in the bill and guts the modest reforms we are finally going to be able to get to the President.

This amendment would require the Federal courts to certify a class that does not meet basic class action requirements. In addition, what the amendment does is a contravention of the requirements of rule 23 of the Federal Rules of Civil Procedure, which rule says you have to have similar law in fact in order to certify a class. The net result of this amendment is that it would require Federal judges to hear dissimilar claims that do not belong together as a class action, and would not be allowed to proceed as a class action under current law. Requiring courts to subclass does not make this amendment any better.

This amendment would require Federal judges to not follow the requirements for certifying class under rule 23. Why do the proponents of this amendment want to do that? They have given reasons for their amendment and I think, whether this is their intention or not—and I should not question the motives of people—but the end result is perpetuating the abuses that were already seen in the magnet courts, these infamous judicial hellholes which have been referred to. I remember only one out of dozens throughout the country, but one was in Madison County, IL.

The purpose of class actions is obvious: to enable courts to decide large numbers of similar claims and to do it fairly and to do it in an efficient manner. Different claims cannot be pulled together as a class action because that would be unfair and it would violate the due process rights of both plaintiffs and defendants. But the Feinstein-Bingaman amendment would require judges to do just that. As you know, that is exactly what the problem is all about, what our bill was trying to correct: judges certifying classes that should never have been certified in the first place. Rules are in place as to what should or should not be certified,

and the Feinstein-Bingaman amendment blows those rules off. The efficiency and the rationale of that rule should not be followed.

The Federal courts should undertake a review to determine whether multistate class actions involving State law claims should be certified. They need to determine that the legal claims are sufficiently similar to warrant class certification. Most State courts make the same kind of determinations as well. The magnet State courts, on the other hand, do not make this determination and that is why they certify huge classes that involve claims that are completely dissimilar, to the detriment of both plaintiff and defendant. That ends up being a due process problem.

In addition, this amendment before us ignores how diversity jurisdiction works, and it eviscerates the reforms that are contained in our bill.

Another argument for this amendment by Senator FEINSTEIN and Senator BINGAMAN is allegedly that Federal courts refuse to certify nationwide class actions. That sort of presumption is plain wrong. That is not the case. There are numerous examples of where Federal courts have certified multistate class actions based on State law claims. There is not a rule against nationwide class actions. Federal courts do certify nationwide class actions where the laws that govern the claims are similar.

Class actions are also certified when the plaintiffs' lawyers organize the claims in a manner so that they may be litigated fairly, even under differing State laws, where they appropriately organize the claims into subclasses. But this amendment does not give the courts any choice to determine whether it is appropriate to subclass.

So for a third time during this period that I am standing, I remind my colleagues again about the extensive efforts on the part of Senator KOHL of Wisconsin, Senator HATCH of Utah, and this Senator from Iowa, getting to this version of the Class Action Fairness Act. No one can question that we negotiated in good faith with our colleague Senator FEINSTEIN, as well as our colleagues Senators DODD, SCHUMER, and LANDRIEU, to make changes to address concerns they had about the original bill introduced.

The bill we have now will keep many class actions in State court under the Feinstein home State exception. That was accepted in committee, way back there in early 2003, in the 108th Congress. Also under the local controversy exception we crafted with Senators DODD, SCHUMER, and LANDRIEU, that will stay in State court.

So I hope I get us back in an understandable way, and what people think is rational after all these compromises, so that there is no further need to change this bottom-line compromise. Again, the purpose of this amendment is to gut the modest, commonsense reforms contained in this bill. This is an attempt to legitimize the class action abuse we have been seeing in the magnet State courts. It is an attempt to legalize the problem by putting it into the rule.

All I can say is, that is not all right. It is not OK. If we are serious about putting a stop to class action abuse, I urge my colleagues to oppose this amendment.

Mr. President, I ask unanimous consent to have printed in the RECORD the letter by Walter Dellinger.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

O'MELVENY & MYERS LLP,
Washington, DC, February 4, 2005.

Re Proposed Choice-of-Law Amendment to Class Action Fairness Act (S. 5).

Hon. ARLEN SPECTER,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: I write concerning the ''choice-of-law'' amendment that Public Citizen has been suggesting should be offered to the Class Action Fairness Act. As I understand it, this amendment would encourage or require federal court judges, faced with multi-state or nationwide class actions, to either: (1) apply the laws of one state to all the claims in the case; or (2) certify the class action despite the manageability problems created by conflicting state laws.

I strongly recommend rejection of this seriously flawed proposal for several reasons.

The Public Citizen amendment violates basic principles of federalism and would extend ''magnet'' state court abuses to federal court. Many consumer protection cases now proceed on a nationwide basis in federal court in those instances in which Congress has determined that a single national law ought to govern. This has been the case with laws such as the Truth in Lending Act (TILA) and the Real Estate Settlement Practices Act (RESPA). Frequently, nationwide class actions are brought and tried to successful conclusions under laws such as these.

Where Congress has chosen not to enact uniform national legislation under which citizens can bring suit, however, it has left the legal issues to be resolved by each state adopting its own law. Allowing each state to decide for itself and for its citizens is the essence of federalism. Instructing a federal judge to pick out one state's law and impose it on other states is a profound violation of federalism principles. Congress is elected by all the people of the United States. When it is acting within its constitutional power under Article I, Congress can decide to impose a uniform rule on the states. It is a far more serious intrusion into the autonomy of the States when a single judge, not Congress, acts to set aside the laws of all of the states (but one) by choosing whichever particular state law the judge likes best and imposing that law on all of the other states.

For example, in *Avery* v. *State Farm Mut. Auto Ins. Co.*, 746 N.E.2d 1242 (Ill. App. 2001), the sate court decided that Illinois law could be applied to a nationwide class of policyholders, and held that State Farm's use of ''non-original equipment manufactured'' automobile service parts violated Illinois law. Yet many other states' insurance laws either expressly or implicitly permitted or even required insurance companies to use non-OEM parts as a way to reduce insurance costs. Avery has been uniformly recognized as an example of judicial excess—the Illinois court exceeded its authority by purporting to dictate the insurance laws of 49 other states. Nonetheless, the proposed amendment would tell federal courts to do precisely the same thing. It would, in effect, recreate in federal court the very state-court problem that precipitated the introduction of this legislation.

The amendment would reverse the decisions of numerous state supreme courts that have rejected application of their laws extraterritorially. Opponents of S. 5 have argued that this amendment is necessary because ''state courts . . . are far more comfortable handling cases involving state contract or tort law.'' Aside from certain magnet courts, however, many state courts have strongly rejected what Public Citizen proposes: i.e., nationwide application of individual states' laws. In fact, the proposed amendment would eviscerate a number of decisions by state supreme courts, refusing to apply one state's consumer protection laws in nationwide class actions. Among the state court decisions that could be reversed by the proposed amendment are the following:

Goshen v. *Mutual Life Insurance Company of New York*, 774 N.E.2d 1190 (N.Y. 2002), (explaining that to ''apply the [New York consumer] statute to out-of-state transactions in the case before us would . . . tread on the ability of other states to regulate their own markets and enforce their own consumer protection laws.'').

Compaq Computer Corp. v. *Lapray*, 2004 Tex. LEXIS 435 (Tex. May 7, 2004) (''The putative class members are domiciled in fifty states and the District of Columbia. All these fifty-one relevant jurisdictions are likely to be interested in ensuring that their consumers are adequately compensated for a breach of warranty. Texas law may not provide sufficient consumer protections in the view of the other states . . . The differences in state law outlined above cannot be concealed in a throng.'').

Zarella v. *Minnesota Mutual Life Ins. Co.*, 1999 R.I. Super. LEXIS 161 (R.I. Super. Ct. 1999) (the court found that there were substantial variations on issues such as statutes of limitations and burdens of proof, which ''plaintiffs have not adequately addressed'').

Ex parte Green Tree Financial Corp., 723 So. 2d 6, 11 (Ala. 1998) (the Alabama Supreme Court expressed ''grave concerns as to whether any national class of plaintiffs in an action involving the application of the differing laws of numerous states can satisfy the requirements'' for certifying a class action).

Dragon v. *Vanguard Indus.*, 277 Kan. 776, 789 (Kan. 2004) (reversing certification of a nationwide class of property owners alleging defective plumbing due to, inter alia, ''wide variance in the laws of various states'' on relevant issues).

State ex rel. Am. Family Mut. Ins. Co. v. *Clark*, 106 S.W.3d 483, 487 (Mo. 2003) (''The trial court abused its discretion in certification of the class with respect to insureds whose contracts are subject to the laws of states other than Missouri'').

Henry Schein v. *Stromboe*, 102 S.W.3d 675 (Tex. 2002) (decertifying a class of some 20,000 purchasers of software products on theories of fraud, breach of express warranty, negligent misrepresentation, promissory estoppel, and deceptive trade practices because class could not demonstrate that Texas law should apply to individual issues of reliance and trial court was required to look to the laws of all fifty states to adjudicate the claims).

Philip Morris, Inc. v. *Angeletti*, 358 Md. 689, 747 (Md. 2000) (denying certification of a proposed tobacco class because, inter alia, Maryland ''conflict of law principles necessitate that the [lower court] engage in individualized assessments for each class member'').

Washington Mutual Bank v. *Superior Court*, 24 Cal. 4th 906, 926 (Cal. 2001) (reversing the

certification of a nationwide class and holding that ''a class action proponent must credibly demonstrate, through a thorough analysis of the applicable state laws, that state law variations will not swamp common issues and defeat predominance'').

Stetser v. *TAP Pharm. Prods. Inc.*, 598 S.E.2d 570, 586 (N.C. Ct. App. 2004) (reversing trial court's certification of a nationwide class of persons alleging the defendant companies had inflated prices and defrauded patients and insurance companies) (''Because this case is composed of plaintiffs nationwide, the remaining forty-nine states' laws, as well as the law of the District of Columbia, must be analyzed to determine whether it conflicts with the law of North Carolina.'').

Linn v. *Roto-Rooter, Inc.*, 2004 Ohio 2559, P57 (Ohio Ct. App. 2004) (reversing trial court's decision to certify a nationwide class ''because of the widespread reluctance to certify nationwide class actions involving consumer protection, fraud, and unjust enrichment claims, and due to the variances in these laws which would render a nationwide class unmanageable . . . the trial court abused its discretion in certifying the class which entails litigants from 35 states'').

Liggett Group Inc. v. *Engle*, 853 So. 2d 434, 448, 449 (Fla. Dist. Ct. App. 2003) (decertifying a statewide class of smokers because, inter alia, the ''highly transient population'' of Florida would ''require examination of numerous significantly different state laws governing the different plaintiffs' claims'') (matters under review by the Florida Supreme Court, see 873 So. 2d 1222 (Fla. 2004)).

Although proponents of the amendment say that its purpose is to protect state law, its real effect would be to overrule an established body of state law.

I would also note that these state supreme court decisions are no less binding on federal courts than on lower state courts. The reason is because, in ''diversity'' cases, federal courts look to the choice-of-law rules of the state in which they sit to decide what substantive state law should apply. Thus, a federal court confronting a nationwide class action would currently defer to the decision of the highest appellate court of that state declining to allow that state's law (or any other single state's law) to govern the claims of consumers residing throughout the nation. But the ''choice-of-law''' amendment would change that. As its proponents concede, the ''amendment would allow a federal court to choose not to follow the choice-of-law rule of the state in which the court is located.'' That is another serious distortion of federalism principles.

The amendment could hurt consumers from states with strong consumer protection laws. Another problem with the proposal is that, in their effort to make sure that a single state's law may be applied even in a nationwide class action, critics of S. 5 have not thought through the consequences of what would happen if federal courts actually did apply a single state's law. To pose the question bluntly: which single state's law? If the choice-of-law amendment were adopted, that question—the ''which state'' question—likely would be the source of considerable mischief, often to the detriment of consumers.

For example, assume that someone brings a nationwide class action alleging that the defendant company participated in fraudulent sales behavior. State consumer protection statutes vary widely, but the court may decide to apply Alabama law to all claims. That would be bad news for the class members living in California and other states with strong consumer protection statutes, because the Alabama statute prohibits the assertions of consumer protection claims on a class basis. Thus, the claims of all class members presumably would be subject to dismissal. In short, consumers with valid claims under their home state laws, adopted by their own state legislatures and courts to protect their interests, may have their claims obliterated (or, at least, rendered much less beneficial).

Even its proponents appear to acknowledge this problem. Professor Arthur Miller, for example, has suggested that one state whose law would ''often'' be applied in a nationwide class action would be ''the state in which the defendant's headquarters is located.'' See Letter of Prof. Arthur Miller to Sen. Bingaman, June 17, 2004, at 3.

The amendment, in short, is a radical attempt to avoid the fact that in some areas Congress has chosen to leave the decision of what substantive law should govern conduct to the legislative process of each state. By having judges dismiss the laws of all states but one, the Public Citizen amendment violates fundamental principles of federalism.

The amendment is based on the false premise that federal courts never certify multi-state classes based on state law. It is worth noting that neither federal nor state courts have any hard-and-fast rule against the certification of nationwide or multi-state classes asserting state law claims. To the contrary, federal ''[c]ourts have expressed a willingness to certify nationwide classes on the ground that relatively minor differences in state law could be overcome at trial by grouping similar state laws together and applying them as a unit.'' In re *Prudential Ins. Co. of America Sales Practices Litig.*, 148 F.3d 283, 315 (3d Cir. 1998). Indeed, the two leading proponents of the Public Citizen amendment—Prof. Arthur Miller and Prof. Samuel Isaacharoff—have themselves succeeded in persuading federal courts to certify such nationwide class actions.

The main reason why courts, state and federal, often refuse to certify nationwide classes is because attorneys too often propose classes that overreach—classes that encompass too many people with too many disparate facts asserted under too many different laws. See, e.g., *Chin* v. *Chrysler Corp.*, 182 F.R.D. 448 (D.N.J. 1998) (''Plaintiffs could have reduced or simplified the case . . . by the creation of a smaller and more clearly defined proposed class. Instead, Plaintiffs have asked this Court to certify the largest class possible . . . on the basis of mere promises that a manageable litigation plan can be designed . . . for five causes of action under the laws of 52 jurisdictions''). That, I submit, is a necessary consequence of respect for federalism. There is no reason to exalt the need for nationwide class actions in every case above the basic principles of federalism.

The amendment, which would ignore the manageability problems engendered by varying state laws, would violate due process rights. If a federal court decided that a single state's law cannot be applied over all claims in a nationwide class action without violating the Constitution, the choice-of-law amendment would allow a federal court to apply several states' laws to the claims at issue. But in that circumstance, the proposed amendment would then forbid the court from denying class certification (even ''in part'') on the grounds that applying those several states' laws would render the case one devoid of common legal issues that could not be tried fairly on a class basis.

The amendment would distort traditional and prevailing class action practice in a way that raises serious due process concerns. The basic reason is that it would instruct federal judges that, even if they truly believe that the fact that several (or even all 50) states' laws must be applied in a particular case means that the case cannot possibly be fairly adjudicated as a class action, they must simply ignore that true belief and grant class certification anyway.

In deciding whether to certify a class, for example, a federal court must inquire into (a) whether ''common questions of law'' will ''predominate'' and (b) whether the class action is ''superior'' to other methods, both of which require consideration of any ''difficulties likely to be encountered in the management of the class action.'' Fed. R. Civ. P. 23(b)(3). What that means is that a party objecting to the proposed class action can argue that various state's laws must be applied in the case; that those state laws differ in important ways (indeed, they may even conflict); and that those variations (or conflicts) will make it impossible to adjudicate the class action fairly on a class basis—and will make it impossible for one jury to decide those different or conflicting laws in one trial. In the parlance of Rule 23, the party objecting to the proposed class may argue that the differing state laws are reasons why common questions of law do not ''predominate'' and that the multi-state or nationwide class action is not ''superior'' to other methods of resolving the case (including a statewide class action).

Again, the Avery case makes for a good example. If the court had (correctly, in my view) concluded that many states' laws would need to be applied to resolve that nationwide class action, that determination would in all likelihood have also led the court to conclude that it would not have been fair to try before one jury the legality of the use of non-OEM parts nationwide. After all, how could a single jury hearing that the practice is illegal in Illinois, legally required in other states, permitted in other states, and not addressed at all by still other states, render a fair and coherent verdict? Especially when one keeps in mind that some class actions involve dozens of claims, nationwide class actions would in some cases require literally hundreds of different decisions for a single jury to make.

These Rule 23 requirements have due process underpinnings. Class actions serve an important public function: they allow numerous, similarly situated individuals whose relatively small claims might otherwise be shut out of the legal system to aggregate their claims and obtain collective relief. At the same time, the purpose of the class action device is to allow the aggregation of only some—not all—lawsuits. Indeed, as the U.S. Supreme Court has noted, there is a strong presumption in our legal system that claims will be litigated individually; class actions are an exception to that general rule. Thus, lawsuits seeking damages in which common questions of questions do not ''predominate,'' and in which the class action is not ''superior'' method of resolving the dispute, are denied class treatment for the very reason that the court concludes that it would not be fair to resolve the whole case in one trial. In other words, a class cannot be certified at the expense of ''procedural fairness.'' *Amchem Prods., Inc.* v. *Windsor*, 521 U.S. 591, 613 (1997); see also *Malcolm* v. *Nat'l Gypsum Co.*, 995 F.2d 346, 350 (2d Cir. 1993) (holding that the benefits of aggregated litigation ''can never be purchased at the cost of fairness''). This principle is as important for protecting the plaintiffs (that is, the unnamed class members) as it is for protecting defendants. See id.; see also *Hansberry* v. *Lee*, 311 U.S. 32, 40–42 (1940).

The proposed amendment violates this principle by elevating the class certification decision over ''procedural fairness.'' Whereas the fact that different state laws would need to be applied to a multi-state or nationwide class action is unquestionably a valid factor to consider in deciding whether a class should be certified, the proposed amendment would dictate to federal judges that they cannot consider that factor at all. For example, under the facts of the Avery case, the

choice-of-law amendments would require the federal court to ignore the central fact that the 50 states have made fundamentally conflicting policy choices over the legality of the conduct at issue. The court would be required not to consider the obvious fact that it might be procedurally unfair for the same jury to decide whether the use of non-OEM parts is legal in all of the different states.

I am not suggesting that, in every multistate class action, the laws of every state must be applied as a matter of due process. That depends upon the particular case, and upon the connection that any one state might have to a proposed class action. Rather, what I am suggesting is that in cases in which federal courts themselves decide that due process requires the application of numerous states' laws, it is a serious due process problem to tell those same federal courts that they may not deny class certification on same basis—to tell those federal courts that they must certify a class despite their firmly held relief that the differing state laws will make use of the class action device fundamentally unfair.

For all of the foregoing reasons, I find the proposed choice-of-law amendment to be constitutionally suspect (both from a federalism and due process standpoint) and wrongheaded as a public policy matter. It should be rejected.

Sincerely,

WALTER E. DELLINGER.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. FRIST. Mr. President, for the information of our colleagues, we are making good progress on the class action bill. I appreciate everyone's participation in coming to the floor and offering and talking about their amendments. I want to keep the pace going.

The Democratic leader and I have been in discussions over the day. We want to complete this bill at the earliest possible time this week.

I will shortly be asking unanimous consent that the vote on the Kennedy amendment be this afternoon at a time which I will state. After that we will be proceeding to the Feinstein amendment. We will at that time divide the time accordingly.

At this point, I ask unanimous consent that the vote occur in relation to the Kennedy amendment No. 2 at 4 p.m. today; provided further that following that vote the Senate proceed immediately to a vote in relation to the Feinstein amendment No. 4; provided further that the debate until 4 be equally divided in the usual way, and that no amendments be in order to either amendment prior to the votes.

Finally, I ask unanimous consent that there be 2 minutes for debate equally divided following the first vote. I further ask unanimous consent that 15 minutes of minority time be reserved for Senator KENNEDY.

Mr. REID. Mr. President, I have no objection to the unanimous consent request.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. FRIST. Mr. President, while the Democratic leader is here, I mentioned as he was returning to the floor that we are all working very hard to complete the bill on class action. I understand there are several other amendments to be considered. But I reflected our commitment to stay on the bill and complete it at the soonest time possible.

Mr. REID. It is my understanding that the distinguished Republican leader has indicated we will finish this bill this week. Is that right?

Mr. FRIST. Mr. President, that is right.

Mr. President, again I encourage our colleagues to focus on the bill before us today and tonight and tomorrow, and we will be staying on the bill until we complete the bill. I appreciate everybody's consideration.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SESSIONS. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SESSIONS. Mr. President, Senator FEINSTEIN has offered an amendment to S. 5, the Class Action Fairness Act of 2005, to address the opponents' claim that Federal courts routinely deny certification of multistate or nationwide classes that involve different State laws. Under this amendment, that would change the underlying bill we are considering here. Federal courts would be required to certify class actions, even if the claims were brought under State law.

The amendment further provides that courts faced with nationwide classes involving different State laws should either create subclasses to account for variations in State law or, if such subclasses are impractical, to attempt to apply the proper State law to the class members claims only to the extent doing so is practical.

The proposal would toss State laws and procedural fairness out of the window for the sake of allowing a nationwide class action. It would reverse nearly 70 years of established Supreme Court case law that requires Federal courts to apply the proper State law when they hear claims between citizens of different States.

It would reverse numerous decisions about State supreme courts rejecting the application of one State's law to class action claims that arise in 50 States, and it would seriously undermine the ability of plaintiffs and defendants alike to have a fair trial.

Most importantly, it would have the perverse effect of perpetuating the very magnet court abuses that the legislation seeks to end.

Here is why the latest choice-of-law amendment should be rejected. First, the premise of the amendment is false. Federal courts do not have a hard and fast rule against certifying multistate class actions. Rather, both Federal and State courts—except for certain magnet jurisdictions—conduct a careful inquiry before certifying a class to ensure that common legal issues predominate, as required by the Federal rules governing class actions.

The reason for this requirement is self-evident. The whole point of a class action is to resolve a large number of similar claims at the same time. If the differences among the class members' legal claims are too great, a class trial will not be fair or practical.

In some circumstances, Federal courts have found that the law of different States was sufficiently similar that a class action could go forward. In other cases, they have found the differences were too great to have a fair class action trial.

If the laws under which the liability is founded are significantly different, you can't try them in the same trial. If they are not that much different, you can make it work.

The proposed amendment would take away the discretion of Federal judges to make these important decisions as they always have.

Proponents of the amendment conveniently ignore the fact that Federal law on this issue is quite consistent with the approach taken by numerous State supreme courts, which have refused to certify cases where the differences in State law would make it impossible to have a fair or manageable trial. In fact, the proposed amendment would reverse decisions by the Supreme Court of California, Texas, New York, and numerous other States that have rejected nationwide classes in such circumstances as these.

Second, Federal courts already use subclassing where appropriate. Subclassing basically means dividing a class into a couple of smaller classes where claims may be more similar to one another. In rule 23 of the Federal Rules of Civil Procedure, the nearly 40-year rule governing class actions explicitly gives courts the option of using subclasses to account for variations in the class as long as the trial would still be manageable and fair.

For example, if a case involved State laws that can be easily divided into three or four groups, subclassing would be appropriate if the trial would otherwise be manageable. At the same time, if subclassing were used in every situation that involved different State laws, in some cases there would be so many subclasses it would be impossible to have a manageable or fair trial.

Under the current law, Federal judges have the discretion to decide when subclassing makes sense. That approach is working. Why change it? If it ''ain't'' broke, don't fix it. We have not had serious problems, and it is better to allow the discretion with the judge than for us to try to anticipate and put in hard law requirements involving complexities in the future we cannot anticipate fully today.

Third, the amendment would hurt consumers by subverting State laws.

The proposed amendment suggests that if subclassing will not work, the court should simply respect State laws ''to the extent practicable.'' What does that mean? How does the court partially carry out State law? Judges are responsible for carrying out the law, not for carrying out the law to the extent practicable. It would be a dangerous empowerment and an erosion of our classical commitment to following law.

By suggesting that Federal courts should ignore variations in State laws when respecting State law is impractical, this provision would perpetuate the very problem the class action bill is trying to fix. For example, in the notorious Avery v. State Farm case, a county judge in Illinois applied Illinois law to claims that arose throughout the country, ruling that insurers could not use aftermarket parts in making auto accident repairs even though several States had passed laws encouraging, even requiring the use of these more economic parts to keep down the cost of insurance premiums. The approach taken by the Avery judge and condoned by the proposed amendment actually hurts consumers by denying them the protection of their State's laws.

Some State legislatures have adopted particularly strong laws in certain areas because their citizens have expressed strong feelings about these issues; for example, privacy or consumer fraud. Under this amendment, the citizens of such States would not be entitled to the protection of their State's laws in nationwide class actions. Instead, their claims would be subject to some compromise law created by the judge in order to carry out a class action.

These are some thoughts I share about this legislation. We do have a need for class action reform. The legislation before the Senate is sound. We know if we stay firm, if we do not willy-nilly amend this bill, if we keep it clean and send it forward to the House, they will approve it, we will make this law, and for once pass a serious tort reform legislation that will improve justice in America and reduce costs.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. CARPER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CARPER. Mr. President, I would like to take a couple of minutes today to speak to the amendment being offered by Senators FEINSTEIN and BINGAMAN. I don't think we will find on either side of the aisle a Democrat or Republican more thoughtful than either of them, or more fair-minded. Senator FEINSTEIN, in particular, has been heroic in her efforts to try to bring about consensus on class action so we end up with legislation to make sure little people who are harmed by big companies are able to bind together and be made whole; to ensure that the companies that are accused know if they step out of line there is a price to pay for that; legislation that will also make sure that the defendant companies, large or small, have the opportunity to have a fair trial for whatever they are accused of in the litigation; and our last goal is to make sure the Federal judiciary is not overwhelmed with litigation that could be in State courts, ought to be in State courts, and is needlessly moved to Federal courts.

Those are the objectives we all share, Democrats and Republicans, whether we like or do not like the bill. I am in support of the legislation.

Most consumer laws that end up in courts are laws that are adopted by our States. There are some areas where the Federal Government has laws in place to protect the consumers, but the lion's share of the consumer protection laws are written by the various States.

The effort by Senators FEINSTEIN and BINGAMAN is laudable; that is, to make sure that when State laws have been violated, particularly when State laws have been violated in a number of States, that whoever has violated those laws is going to be held accountable. The question is, If you have a class action case that is brought forward based on the laws of 10, 20, or 30 States or more, under whose State law do we argue in court the class action litigation? Is it in a State that has fairly weak consumer protection laws or a State that has very strong consumer protection laws?

I am not a lawyer by training, and I come at this as a lay person simply trying to figure out what is the right and fair thing to do. As I understand class action litigation, I will use the example of where we have maybe 21 States that have been bound together in a class action filed in a particular State court, one of those 21 States, and in particular, a State where the litigation is brought, the effort might be to apply that State's laws to all the other States that are part of this. Senator SESSIONS talked about a situation in a case involving class action with State Farm, where the suit alleged that consumers were being harmed because in the car repair business, when replacement parts were used, some of the States allowed the use of non-original equipment replacement crash parts, sometimes referred to as generic parts. In this case, Avery v. State Farm, an Illinois judge applied the Illinois Consumer Fraud Act to a 48-State class, even though there were significant differences in the States' consumer protection laws and vast differences in the laws of the different states on the use of these types of parts. Most States explicitly authorize their use and a few States even require their use to reduce costs for consumers.

As I have looked into this matter, I have learned when there is an effort to move a class action litigation on consumer issues from a State court to a Federal court, the Federal judge has a number of decisions to make as to whether they want to receive it and hear it at the Federal level.

One, they can say, yes, on the basis of the law that is in question here, and the facts, this is one that makes sense to be heard at the Federal level and to go forward.

The Federal judge can say—again, using the example of 21 States because the math works easily—let's divide those 21 States into three subgroups, and each of those 7 States have laws that are fairly similar but distinct and apart from the other two subgroups. So a Federal judge could say, we are going to go forward with this class action litigation. We will do it as one case, but we will have three subcategories of subgroups.

A third alternative that is available to a Federal judge would be to say, we are not going to have one case; we will have maybe three cases. In those instances where the laws of the States are pretty similar, we will group those seven, and the same would be true for this seven and that seven. And we will hear three separate cases, not one.

If none of that works, the Federal judge is always free to say this is a State matter. The laws and the facts are in such disarray that it is difficult to try them as one case.

Some States have very strong consumer laws, some not. There is a whole big range in between where the laws and the facts are just too disparate and different, and the judge can simply remand it back to the States.

If the Federal judge declines to hear that consumer class action, then it can be tried in State court. Whoever the plaintiffs are, in those instances, will have their day in court. If you happen to be from California, the latter course is not a big deal because you have so many people, 30 million people, and it is not as difficult to put together a meaningful class and to be able to attract an attorney to represent your case. If you happen to be from a smaller State, with fewer people, then it can be more of a challenge to put together a large enough plaintiff class in that State to pay for an attorney to represent the interests of consumers in that State. I acknowledge that.

Having said that, my overriding concern with this legislation is this. I mentioned the four principles earlier, but my overriding concern with this legislation is that we not begin to pick apart this carefully balanced compromise on which we have worked. I have been here 4 years. We have worked on it for almost those 4 years I have been in this Senate. I know people worked on this 3 years before that. We have come so far from where this legislation began in 1997.

This is not tort reform, as a lot of people like to think of it. This is, as

others have said today, court reform. Our goal is to, again, make sure if people get harmed, they have an opportunity to be made whole, to band together into similar groups to make sure the accused and the defendants in the case have a chance to be fairly defended in a courtroom. It is a fair shot.

My fear is, to the extent this amendment would be adopted, it invites amendments of others who may not like this bipartisan compromise because it does not go far enough.

Earlier this month, in the House of Representatives, their bill, which passed by a fairly wide margin in the last Congress, was reintroduced. There are some people in the other Chamber, as well as some in this body, who would like nothing better than to be able to change this bipartisan compromise and move it, frankly, a lot closer to where the House bill is.

Eventually, my friends, we are going to pass a class action bill this year. My own view is it is not going to get any better or more balanced or fairer to plaintiffs and defendants than the compromise we have worked out here this year. As a result, I will oppose, albeit with some reluctance, the amendment offered by Senators FEINSTEIN and BINGAMAN. I know they have put a lot of time and energy into this amendment. Frankly, my staff and I have as well, trying to find a way to accommodate the concerns they have raised. In the end, I do not believe we can, and I must reluctantly oppose the amendment.

I yield back my time.

The PRESIDING OFFICER (Mr. MARTINEZ). The Senator from Vermont.

ATTACKING THE DEMOCRATIC LEADER

Mr. LEAHY. Mr. President, I am going to speak in favor of the commonsense amendment brought to us by Senators BINGAMAN and FEINSTEIN. Before I do, though, if I could make a couple personal comments.

I have been in the Senate for 31 years. I came at a time when there was a real effort for Republicans and Democrats to work together, and for White Houses to do so. I have been here during the administrations of President Ford, President Carter, both terms of President Reagan, President George H.W. Bush, both terms of President Clinton, and now into the second term of President George W. Bush.

I have seen terrific majority leaders in both parties, leaders in both parties. Senator Mansfield, Senator Scott, Senator BYRD, Senator Baker, Senator Dole, Senator Mitchell, obviously Senator Daschle. I think of all the times they would work so closely to bring people together. The President, whoever the President was, would do the same.

I can remember times Senator Dole, a partisan, tough-minded Republican, would reach a point as majority leader when he would call Senators from both parties into his office and say: OK, boys, let's see where we go from here. How do we get this legislation done?

Senator Baker would do that. Senator Mansfield was famous for coming out on the floor during evening sessions and picking a few Senators from both sides of the aisle and saying: Come up to the office. We have to chat and work things out. Senator Baker had the ability to do that. He would go down and speak to President Reagan and suggest to him which Democrats, which Republicans, he might call to make things work out.

You also had, during that time, the practice where the two great parties, the Democratic Party and Republican Party, would keep from attacking the leaders of the other party's caucus in either body. They did it because they knew that, while they might oppose each other on one issue today, they were going to have to work together for the betterment of the country the next day.

Now it has broken down. For some reason, something I never thought I would see, nor, I suspect, did any of those leaders I mentioned from either party ever think they would see, it stopped last session when the leader of one party went to the home of the leader of the other party and attacked him in a political campaign, and attacks were then mounted by the national party. I think it was a mistake.

In the years I have talked about, the 31 years of both Republicans and Democrats running the Senate—we have seen it go back and forth a half a dozen times since I have been here—it has worked very well, where you fight for your party, you fight for your majority or minority, but you do not go after the leaders.

I was hoping the last election might be an aberration. Now I see a difference when the Republican National Committee has come out with the most scurrilous, outrageous attack on the Democratic leader, Senator REID.

It makes no sense whatsoever. Senator REID spent his years as the deputy Democratic leader helping to get legislation through this place. He worked very closely with two different Republican deputy leaders, both when he was in the majority and in the minority, to move legislation through.

I can think of dozens of times, hundreds of times on this floor when legislation looked like it might not get through, and both Republicans and Democrats were going to HARRY REID as the deputy leader to say: How can we work this out?

He would say: Why don't you leave off these amendments, and I will talk to the Republicans and they will leave off these amendments. We will get it through.

It always worked. The legislation we have before us is not one that Senator REID favors, but he worked in good faith with the Republican leadership to bring it up. Almost a day after he does that, he gets attacked by the Republican National Committee, a day or so after the President of the United States in his State of the Union message said how we must all work together, and on the day when the President invites Senator REID down for a cordial family dinner, which is, of course, showing how bipartisan we can be, the Republican National Committee—controlled, of course, by the White House—sends out this scurrilous attack on Senator REID.

It is a mistake. I would say the same thing if the Democratic Party was doing it to the Republican leadership. It is a mistake because ultimately the Senate consists of only 100 men and women who have the privilege to represent 290 million Americans at any given time. There are so many things we need to get done. We should be working together.

An example: During President Reagan's term, we were facing a real crisis—not a manufactured crisis but a real crisis in Social Security, not the manufactured one we see today, a real one—and we were stuck here on the floor. Neither side seemed to budge, and efforts to do something that might save Social Security seemed lost when two giants of the Senate—I know this for a fact because I was standing right here on the floor—Senator Daniel Patrick Moynihan of New York and Senator Robert Dole, the leaders on the Finance Committee where Social Security reform now seemed founded, were talking, and Pat Moynihan walks over to Bob Dole and says: We have to give this another try. It is far too important to let this fall apart in partisan bickering. Let us make this work. You know the two of us can do it.

I and a couple others who were standing there said: We are all with you.

When I say ''I and a couple others,'' Republicans and Democrats said: We are all for you. You can do it.

They went down and saw President Reagan, talked with him and said: Look, we are going to take another try at it, if you will work with us.

He said: Fine.

And they did. As a result of that, in the 1980s, Social Security was put in solvent standing for 70 years. If we do nothing with Social Security now, it will still be solvent in the year 2045, 2050.

Wouldn't it be nice if we went back to the days of giants in the Senate and Presidents of both parties who wanted to work with the Members of the House and Senate who actually want to get something done, not for partisan gain but for American gain, not for one political party but for all Americans?

Those who came up with the bright idea of attacking HARRY REID, a man who will get reelected his next term, I suspect by even a greater margin than the last landslide he had, ought to step back. They might raise money this way. They might stir up some of the true believers this way. They do nothing for the country. They do nothing for the Nation. All they do is deepen the divides instead of healing them. It would be nice if we could have leaders

who would try to be uniters, not dividers. We haven't had that for a few years. I wish we could.

I digress somewhat. I see the distinguished Chair, a man I knew before he came here, admired in his work as a member of the Cabinet. We are benefited by having him here. I hope that he might be one of those who will come in not with preconceptions but his enormous talent of bringing people together and work with us. I say this somewhat unfairly because under the rules he cannot respond, of course. I hope I have not damaged him irreparably with the Republican Party in Florida, but he has known me long enough to know I mean what I am saying.

This Bingaman-Feinstein amendment is a commonsense amendment. It seeks to rectify one of most significant problems of the class action legislation under consideration by the Senate. As we all know, this class action bill is going to sweep most class actions into Federal court. But then many of the Federal courts refuse to certify multistate class actions because the court would be required to apply the laws of different jurisdictions to different plaintiffs, even if the laws of those jurisdictions are quite similar.

Without this balanced amendment, members of important class actions that involve multiple-State laws may have no place to receive justice. In other words, they get removed from the State court to Federal court, but then the Federal court says: Well, because the State laws may be different, we can't do anything. But you can't go back to State court because you are removed here. It is probably as classical a legal Catch-22 as one could see.

According to 14 of our State attorneys general:

> [I]n theory, injured plaintiffs in each state could bring a separate class action lawsuit in federal court, but that defeats one of the main purposes of class actions, which is to conserve judicial sources. Moreover, while the population of some states may be large enough to warrant a separate class action involving only residents of those states, it is very unlikely that similar lawsuits would be brought on behalf of residents of many smaller states.

The Feinstein-Bingaman amendment would help citizens of States such as my own of Vermont. We have smaller populations. We are only the size of one congressional district, 610,000 people. But it would allow us to join with other injured plaintiffs from other States to have their day in court. Federal courts should be allowed to certify nationwide class actions by applying one State's law with sufficient ties to the underlying claims in the case. This amendment would give Federal judges that power and make it clear that they should not deny certification on the sole ground that the laws of more than one State would apply to the action.

If the Senate is truly interested in passing class action legislation that gives injured citizens from every State a place to seek relief, then all Senators should embrace this commonsense amendment. I hope my colleagues will support this important amendment.

I thank Senators BINGAMAN and FEINSTEIN for their hard work on the amendment.

SAD NEWS FOR VERMONT

On another issue, I spoke of my small State. I was born in Vermont, a precious State. We have had Leahys there since the 1850s. It is in my heart and soul. I read with pride but with sadness an article on the front page of the Washington Post today about Vermont and the number of our brave men and women who have been called up in the Guard and Reserves. Two States have the highest per capita callup in the Nation—Hawaii and Vermont, two of the smaller States. We also have the very sad distinction of having the most fatalities, the most soldiers killed per capita of any State in the Union.

I mention this because in our State, everybody knows everybody else. If one person dies, everybody in the State feels it. I have been to those funerals where I have seen people with whom I was in kindergarten, people I grew up with, neighbors of mine or my sister's, people my parents knew. You go to the funeral, you walk into a church, not as a member of the congressional delegation from Vermont—we have all done that—but you go as a friend and neighbor, and that is what you see, friends and neighbors. I will later today put the full article in the RECORD.

It struck me as to what this means. We have one small town that is about the size of a small town in which my wife and I live in Vermont. They have one country store. It is a small store, but it is important to the town. Everybody goes there. A mother and a son run the store. The son gets called up. He goes bravely, of course. The mother cannot handle the store by herself, and the store closes. The community in many ways has lost its center.

These are the realities of what is happening. Several of us met earlier today from both bodies, both parties, to introduce legislation to increase health benefits for those in the Guard and Reserves who are called up, to improve their retirement situation, make sure they stay healthy, make sure if they have a solely owned business and they get called up, they can at least have health care for their family.

I mention this again not because it is apropos to the legislation—I do not see anybody else seeking recognition; I am not taking away from others' time—but I hope those who are watching or listening to this will read this article about what happens in rural America with these callups.

In my State, the largest community is only 38,000 people. The town I live in has about 1,500 people. They know everybody. I live on a dirt road on the side of a mountain with magnificent views. Again, everybody is on a first-name basis. When somebody gets called up, you know it, you feel it.

This is not a question about whether somebody is for or against the war. In my State, everybody has supported those who have gone. Even though I would suspect the majority of the people in Vermont are opposed to the war, they are all supportive of our troops. But it hurts. It is real. I hope we can bring them home soon.

I was heartened by the elections in Iraq. I was heartened by the efforts of those who would brave in some cases death to go out and vote. I hope those of us in our country who say it is going to be a hard time to vote today because it is raining or it is snowing or it is cold or it is hot or it is inconvenient to go those extra five blocks, or whatever the reason, look at what they did.

I hope that country will soon be able to take care of itself. We are going to spend huge amounts of money in this budget to build schools, improve police forces, build communications, roads, and hospitals all in Iraq. We have those same needs at home. I hope soon they can be on their own. I hope soon our men and women can come home, as many safely as possible.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. BURR). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HATCH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HATCH. Mr. President, I would like to take a moment to demonstrate just how out of balance the class action has become and to underscore why we need to get this bill passed.

Before I do, I want to make it clear that I do not object to class lawsuits. Legitimate class action lawsuits are helpful, when they are legitimate, when there is a good cause of action, when people really have been abused.

Legitimate cause of actions do not have to seek out these favorable jurisdictions where the law is stacked against the defendants, which is what this bill helps to cure. When they are legitimate and brought in the best interest of the class members, class action lawsuits are a vital part of our judicial system. They can serve as a means to ensure that injured parties who might otherwise go unrepresented have the opportunity to have their injuries redressed.

However, in recent years we have witnessed a disturbing trend where some lawyers are bringing and settling class action lawsuits in which the chief interests actually being served appear to be those of the lawyers and not the people for whom they are bringing the actions. Too often the plaintiffs' attorneys recover millions of dollars in attorney's fees while the class action members get little more than a coupon, if that.

While we must acknowledge that there have been a few isolated instances of abusive settlements in the Federal courts, these are the rare exception. By contrast, numerous examples of abusive class action settlements

originate from the State courts. As we have noted in the Judiciary Committee report in the 108th Congress, the Class Action Fairness Act is a ''modest, balanced bill to address some of the most egregious problems in class action practice.'' It is not, however ''intended to be a panacea that will correct all class action abuses.''

This bill is the result of intense bipartisan negotiations and is our best effort to address a problem that is pervading our State court system. Abuse of the class action system has reached a critical point, and it is time that we as a legislative body address the problem. The public is increasingly aware of the system's unfairness. News programs, such as ABC's ''20/20,'' have covered the rise in class action jurisdictions in certain magnet jurisdictions, magnet meaning jurisdictions where these extortionate suits are brought because they can get a tremendous advantage regardless of whether they are right or wrong.

Scores of editorials have called for actions in newspapers all across this country. Abuse of the class action system has even become the inspiration for popular literature. In 2003, the author, John Grisham, released a book entitled ''The King of Torts.'' Grisham's novel takes its reader into the world of the mass tort/class action lawyer where clients are treated like chattel and bargaining chips. The value of a potential action is not measured by the merit of the claim but on the number of class members that can be rounded up. The end game is not the pursuit of justice for the class members and clients, but in the pursuit of a hefty attorney's fee.

Although Grisham's book is intended as fiction, it is hard to distinguish it from the facts of our broken class action system.

Let me read a few passages:

> Nobody earns ten million dollars in six months. . . . You might win it, steal it, or have it drop out of the sky, but nobody earns money like that. It's ridiculous and obscene.

Now this quote may come from a fictional story, but it is too often too close to the truth. This short novel written by Grisham demonstrates the problems with our class action system all too well. As his book shows, with drug manufacturers the sad but inevitable fact is that people are injured every day in this country by products they buy, and justice does require that they receive just compensation for their injuries.

Frequently, class actions are the best way to compensate large groups of injured consumers. Yet, Grisham's novel, ''The King of Torts,'' also shows that the financial reward of a settlement is so great that the class action system has attracted a small group of unscrupulous lawyers who will do anything, say anything, and sue anything or anybody—not to help their clients but to line their own pockets.

We keep hearing this is not a crisis, that not everyone is gaming the system. Everyone in this body knows, however, that a few bad apples can spoil the bunch. In this case, these few lawyers are hurting our civil justice system. This reform is one small step toward restoring some balance to that system. What I have read in this work of fiction is too often fact today. Everybody knows it. Without question, many of today's class actions are nothing more than business opportunities for some lawyers to strike it rich and too often they have little, if anything, to do with fairly compensating the injured class members.

Some law firms make no secret of this. One law firm actually states on its Web site that it has brought over 24 nationwide class actions in Madison County, IL, a court notorious for approving settlements that benefit the lawyers, and that it specializes in class actions that seek less than $500 in damages for class members. Plaintiffs beware.

I am told, for example, of a law firm that explicitly acknowledges that the more potential class members there are to a claim, the more the case is worth their while. Specifically, the ''frequently asked questions'' section of their firm's Web site states:

> More claimants means greater potential liability for defendants. Because there is greater potential liability, these lawsuits become worthwhile for lawyers to prosecute on a contingent-fee basis.

Worthwhile, indeed. Worthwhile for the lawyers.

A small handful of wealthy lawyers is profiting from the class action system. According to an article appearing in the 2001–2002 edition of the Harvard Journal of Law and Public Policy five firms accounted for nearly half of the class action lawsuits filed in Madison County, IL, and Jefferson County, TX.

Of the lawsuits filed in these districts, many allege the same causes of action, represent the same class of plaintiffs that are brought against many of the same parties within an industry.

While these lawyers might have something to gain, the same cannot clearly be said with respect to plaintiffs, consumers, and those employed by defendant companies, who lose their jobs as a result of these types of lawsuits.

It is evident that a few key courts have been singled out by a small group of legal players in the class action world. This point is reinforced by a 2003 study conducted by the Institute for Civil Justice/RAND and funded jointly by the plaintiffs and defense bar to determine who gets the money in class action settlements. The study found that in State court consumer class settlements, it is the class counsel and not their clients who often walk away with a disproportionate share of the settlement.

What do their clients get? Well, quite simply, not enough. I believe that the many hard-working and honest class action lawyers should be compensated for their hard work and efforts. The overwhelming number of lawyers are honorable people. They are honest. They are hard working. Only a few are causing the lion's share of trouble. The majority of the honest ones are not searching for jackpot jurisdictions where the judges and the lawyers are in cahoots and somehow always find against the defendants.

I also believe such compensation should be reconcilable with a fair recovery for the client. I have supported large recovery for trial lawyers when I thought it was justified. Quite honestly, it is simply not right when our judicial system allows lawyers to walk away with millions of dollars while in some cases their clients walk away with nothing more than a coupon good toward a future purchase of the very product that was the subject matter of the class action to begin with.

I do not know about my colleagues, but when I have a problem with a product, sometimes the last thing I want to do is buy that product or have anything to do with the company or firm that makes that particular product. Frankly, keep your coupon and show me the money. If the coupons were so good, one would expect the lawyers would request that they be paid in coupons, not money.

In real life, we are too often reminded of the legendary fictional case Jarndyce v. Jarndyce of Charles Dickens' ''Bleak House'' in which legal fees ate up the whole estate so that the intended beneficiaries could not benefit.

Consider the case of Degradi v. KB Holdings, Inc., in Cook County, IL. The suit alleged that KB Toys, one of the Nation's largest toy retailers, engaged in deceptive pricing practices in some of their products. Specifically, the suit alleged that the prices of certain products were marked to appear reduced when in fact the apparently reduced price was the market price.

In the settlement with KB Toys over these allegedly deceptive pricing practices, the toy store paid attorney's fees and costs of $1 million and not one dime of cash to class members. As part of the settlement, the store held an unadvertised 30-percent-off sale on selected products. That is laughable. Under the terms of the settlement agreement, the toy retailer agreed to offer a 30-percent discount on selected products between October 8 and October 14, 2003. In other words, they held a week-long sale that was not even publicly advertised. By the time most of the class members learned about the sale, their opportunity to recover under the terms of the settlement had passed.

In fact, an independent analyst stated that KB Toys would likely benefit from the settlement because they were driving traffic. What did the class counsel get? They got $1 million. Good work if one can get it, but not necessarily a good outcome for their clients.

Then there was the 1998 class action filed in Fulton County, GA, alleging

that Coca-Cola improperly added sweeteners to apple juice. In this Coca-Cola case, in the settlement of a class action lawsuit alleging that Coca-Cola improperly added sweeteners to apple juice, it was the lawyers who got a sweet deal—$1.5 million in fees and costs. Unfortunately, class members came up empty again, receiving 50-cent coupons but no cash. So each of them got 50-cent coupons while the lawyers walked away with $1.5 million in attorney's fees.

As my colleagues know, I am a lawyer. In my practice, I represented both plaintiffs and defendants. I have watched some of the greatest lawyers appear in court when I started to practice law in Pittsburgh, PA, such as James McArdle. When Jimmy McArdle tried a case, the courtroom was always filled with young and old lawyers who wanted to watch a master at work. He brought one of the first cases against the tobacco industry.

He lost that one, but it was the case that paved the way to clean up the tobacco industry in this country.

I supported many of the tobacco class action lawyers because I thought what they did was in the best interests of their clients and the American public. But this current class action system is out of whack and needs to be fixed. I understand many of these classes are comprised of hundreds if not thousands of members, and I do not begrudge class action attorneys a reasonable fee award. But when the class member gets a 50-cent coupon and the lawyers get $1.5 million because the company has to settle rather than take a chance of going on and getting killed in a forum-shopped court, then you can see why I am upset about this.

There is also the case of Scott v. Blockbuster, Inc. Blockbuster Video was named as a defendant in 23 class action lawsuits brought by consumers, alleging that they were charged excessive late movie return fees. In 2001, Blockbuster agreed to enter into a settlement agreement. Under the terms of the settlement, which was approved by a Jefferson County, TX, State court, the class attorneys received approximately $9.25 million in attorney's fees while the class members received—you guessed it—coupons. Each class member got a $1-off, or buy one get one free coupon. Experts have predicted only 20 percent of the class members will even redeem these coupons.

I am pleased the bill before us at least ties legal fees to the actual amount of redeemed coupons. If only 1,000 people redeem those $1 coupons, the attorneys would be entitled to a percentage of that $1,000 but not $9.25 million.

I have described a few of the many class action settlements streaming out of our State court system. Many State courts appear at times to be nothing more than rubberstamps for the lawyers' proposed settlement agreements. This is not civil justice.

In that Jefferson County case, the company, Blockbuster, had to settle. They could not risk going to trial in that particular jurisdiction because of the outrageous verdicts that are granted by jurors who appear to be compromised.

This is akin to legalized extortion. Too often it appears that the chief interests served by these settlements are those of the class counsel and not the class members. This bill does not prevent class action suits, but it does stop some of these excesses.

The Class Action Fairness Act would alleviate many of the problems present in the current class action system by allowing truly national class actions to be filed in or removed to Federal court. Some of our colleagues have indicated the consumer will be lost here because they will not be able to bring these cases. Give me a break. Of course they will be able to bring these cases. But they have to be brought in a legitimate way, in Federal court where it is much less likely that they will be hammered by political judges who are in cahoots with the plaintiffs' lawyers in that jurisdiction. Federal courts as a general rule will adequately dispense justice in these matters. So the suits can be brought. This will level the playing field that has become tilted in many jurisdictions in the last few years.

It also reforms the way Federal courts would approve proposed settlements with basic requirements such as a hearing and a finding by the court that the settlement is fair, reasonable, and adequate.

This is the second time the Class Action Fairness Act has come to the Senate floor, but we have been working on it for 6 years. When we failed to achieve cloture by one vote in the preceding Congress—by one vote we failed to achieve cloture—we sat down with several Democratic Senators to reach bipartisan agreement on a bill. We know it is difficult for them to work on this bill because the largest hard money contributor to Democrats in the Senate happens to be the American Trial Lawyers Association. Some people believe Democrats are owned by them. I do not believe that. I know there are many wonderful lawyers in the American Trial Lawyers Association. Most are decent, honorable people, and I know many of them. But there are some who are unscrupulous, and they are the ones who have been fighting this reform. And they have the means to do so since they have become billionaires as a result of these coupon cases won in jackpot jurisdictions.

The bill we are considering today is the result of all of these negotiations. S. 5, the Class Action Fairness Act of 2005, presents this Congress with an opportunity to correct some of the dubious practices currently found in the class action system, and to protect the average consumer.

The first response I have is that this amendment is based on a faulty premise. Federal courts do not have a hard and fast rule against certifying multistate class actions. Rather, both Federal and State courts conduct a fair, full inquiry before certifying a class, to ensure that common legal issues predominate, as required by the Federal rule governing class actions. Put simply, this Bingaman-Feinstein amendment, as amended by Senator FEINSTEIN, would toss State laws and procedural fairness out the window for the sake of allowing nationwide class actions. It would reverse nearly 70 years of established Supreme Court case law that requires Federal courts to apply the proper State laws when they hear claims between citizens of different States.

It would reverse numerous decisions by State supreme courts rejecting the application of one State's laws to class action claims that arise in 50 States, and it would seriously undermine the ability of plaintiffs and defendants alike to have a fair trial.

Most importantly, it would have the perverse effect of perpetuating the very magnet court abuses that this legislation seeks to end. The reason for this requirement is self-evident. The whole point of a class action is to resolve a large number of similar claims at the same time. If the differences among class members' legal claims are too great, a class trial will not be fair or practical. In some circumstances, Federal courts have found that the law of different States was sufficiently similar that a class could go forward. In other cases, they have found that the differences were too great to have a fair class trial.

The proposed amendment would take away the discretion of Federal judges to make these important decisions. It is as though we do not trust our Federal judges. In this case, we can trust them.

Proponents of the amendment conveniently ignore the fact that Federal law in this issue is quite consistent with the approach taken by numerous State supreme courts which have refused to certify cases where the differences in State law would make it impossible to have a fair and manageable trial.

In fact, the proposed amendment would reverse decisions by the Supreme Courts of California, Texas, New York, and numerous other States that have rejected nationwide class actions under such circumstances.

Second of all, Federal courts already use subclassing where appropriate. Subclassing basically means dividing a class into a couple of smaller classes whose claims are similar. Rule 23 of the Federal Rules of Civil Procedure, the nearly 40-year-old rule governing class actions, explicitly gives courts the option to use subclasses to account for variations in a class as long as the class would still be manageable and fair—for example, if a case involves State law that can easily be divided into three or four groups, subclassing would be appropriate if the trial would otherwise be manageable. At the same time, if subclassing were used in every

situation that involves different State laws, in some cases there would be so many subclasses that it would be impossible to have a manageable or even a fair trial.

Under current law, Federal judges have discretion to decide when subclassing makes sense.

This approach is working. Why would we change it?

The amendment not only changes it but makes it even worse.

Finally, the amendment would hurt consumers by subverting State law. The proposed amendment suggests that if subclassing will not work, the courts should simply respect State laws to the extent practical. What does that mean? How does a court partially carry out a State law? Judges are responsible for carrying out the law, period—not for carrying out the law to the extent practical.

By suggesting the Federal courts should ignore variations in State laws when respected State law is impractical, this provision would perpetuate the very problem that the class action bill is trying to fix. For example, in the notorious Avery vs. State Farm case, a county judge applied Illinois law to claims that arose throughout the country, ruling that insurers could not use aftermarket parts in making auto accident repairs even though several States had passed laws encouraging and even requiring the use of these more economical parts to keep down the costs of insurance premiums. The approach taken by the Avery judge—condoned by the proposed amendment—hurts consumers by denying them the protection of their State laws.

Some State legislatures have adopted particularly strong laws in certain areas because their citizens have expressed strong feelings about those issues—for example, privacy or consumer fraud. Under this amendment, citizens of such States will not be entitled to the protection of their States laws in nationwide class actions. Instead, their claims will be subject to some compromise law created by a judge who allowed for a class action trial. That is not justice. That is not good law. That is not a good way to approach things. That is not good procedure.

For all of these reasons I urge our colleagues to vote against the Bingaman-Feinstein amendment and keep this bill intact. We also know that should that amendment pass, this bill is dead. One more time, it will be dead. I hope we have enough Senators who realize the importance of getting this bill through and getting these egregious harms straightened out to pass this bill without amendment.

Let me refer one more time to Dickie Scruggs' comments which he made at a luncheon—''Asbestos for Lunch''—which was a panel discussion at the Prudential Securities Financial Research and Regulatory Conference on June 11, 2002, in New York.

I happen to admire Dickie Scruggs. He is very sharp. He is smart. He has made a billion dollars from practicing law, and I think he has made it legitimately—mainly in the tobacco cases. I have worked very closely with the attorneys in those cases. I have a lot of respect for him. He is an honest man.

When this honest man, a top trial lawyer, one of the best in the country, who is a plaintiffs' lawyer, who has brought class actions, who understands the whole system better than those lawyers, says this, I think we ought to pay attention to it. Here is what he said at that luncheon, and he is one of the leading plaintiffs' lawyers in the country. He said:

[w]hat I call the ''magic jurisdictions'' . . . [is] where the judiciary is elected with verdict money.

What does he mean by that? He means the attorneys make so much money that they in turn can give a small percentage of that money to these judges so they can get elected and reelected. So there is an interest in the courts in making sure the attorneys make a lot of money so they can get their share to be reelected.

Let me start at the beginning again. It is best heard in full. Here is what Dickie Scruggs said:

[W]hat I call the ''magic jurisdictions, . . . [is] where the judiciary is elected with verdict money. The trial lawyers have established relationships with the judges that are elected; they're State Court judges; they're popul[ists]. They've got large populations of voters who are in on the deal, they're getting their [piece] in many cases. And so, it's a political force in their jurisdiction, and it's almost impossible to get a fair trial if you're a defendant in some of these places. The plaintiff lawyer walks in there and writes the number on the blackboard, and the first juror meets the last one coming out the door with that amount of money . . . The cases are not won in the courtroom. They're won on the back roads long before the case goes to trial. Any lawyer fresh out of law school can walk in there and win the case, so it doesn't matter what the evidence or the law is.

He said it better than anybody on this floor has said it. And he is a trial lawyer. He said it is almost impossible to get a fair trial if you are a defendant in some of these places. He is talking about Madison County, IL, Jefferson County, TX, jurisdictions in Mississippi, and other jurisdictions throughout the country. I do not want to name them all. The fact is that is what he is talking about. It is impossible to get a fair trial.

I wonder. I have heard my colleagues come on the Senate floor and say there were only two cases a year in Madison County. Come on. That ignores all the threatened cases, demand letters, and settled cases for what are basically defense costs—whatever it costs the company to hire their law firm to defend them because they cannot afford to go to a verdict in that particular jurisdiction because that verdict money is what supports the judges to begin with. They are as interested as anybody in making sure that those verdicts are big, even if they are unjust.

That is what this is all about—and the Bingaman amendment, as amended by my dear friend, Senator FEINSTEIN from California, continues to perpetuate this system.

This is not an overwhelming antilawyer bill. This is not an overwhelming bill that takes away consumers' rights. In fact, it is not a bill that takes away consumers' rights at all. This is not a bill that is unfair. This is a bill that will straighten out these egregious, wrongful actions by some of these jurisdictions by putting these important cases in courts where it is much more likely that justice will prevail. That is what this bill does. It will not prevent anybody from suing. It will not prevent anybody from recovering. It is just that these cases will be tried in Federal jurisdictions in these very prestigious Federal courts, as they should be because of the diversity problems that are presented by these cases, and it is much more likely that we will have less fraud, less unfairness, less jackpot justice in the Federal courts than lawyers are allowed to forum shop them in remote counties with little attachment to the parties.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. KENNEDY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 2

Mr. KENNEDY. Mr. President, I urge all of my colleagues to support this amendment to exclude civil rights and wage and hour cases from the bill's provisions on removal of cases to Federal court. Working Americans and victims of discrimination seeking justice under State laws don't deserve to have the doors of justice slammed on such claims, but that is exactly what this bill will do.

All of us know that families across the country are struggling to make ends meet. We cannot ignore that they are too often hurt by the denial of a fair wage, or by unfair discrimination. We cannot tell the victims of these practices that Congress does not care about this enormous problem.

This amendment is needed, because the harm suffered by plaintiffs in State civil rights and labor cases is real, devastating, and personal—not the sort of harm that results in a few dollars of damages or a coupon settlement.

We have been told that this bill was designed to correct the problem of class actions in which plaintiffs get only a few dollars for minor claims, while elite attorneys earn million-dollar fees. We have yet to hear one example of that happening in a civil rights case or a labor case. We certainly haven't heard anything to suggest there is a major problem in those areas.

Some have said it is too late to raise these concerns about civil rights and workers' rights. We have been told that

too much work has gone into this legislation to consider these issues now. But it is always the right time to stand up for principle.

In its current form, this bill is just another example of the administration's misguided priorities—putting the interests of big companies ahead of America's working families. Why should Congress protect companies that violate State laws by engaging in discrimination or exploiting low wage workers, while making it harder for victims of those practices to get relief in court? Those are the wrong priorities, and we cannot ignore that problem.

We can't turn our backs on victims of discrimination such as Kathleen Rudolph. She and other working women in Florida brought a class action alleging sexual harassment. These women provided health care and other services to inmates in State prisons. They told the court they had suffered almost daily sexual harassment from male inmates, and prison officials failed to stop it. What sense does it make to force a case like that to go to a Federal district court?

The same principle applies to wage and hour laws. A fair day's work deserves a fair day's wage. State wage-and-hour laws provide basic protections to workers, particularly now, as companies continue to improve their bottom lines by pressuring workers to work off the clock. A recent New York Times article described the growing phenomenon of low-wage workers in many fields, including hairstylists, supermarket cashiers, and call center workers, being forced to work without recording their full hours.

These workers are denied overtime pay, and in many cases, working extra hours means they don't even earn the minimum wage. Many of these workers refuse to underreport their hours, and they are punished for not doing so. One manager interviewed by the New York Times admitted:

> Working off the clock was a condition of a call service representative's employment. Hourly workers who complained were weeded out and terminated.

Professor Eileen Applebaum of Rutgers University emphasized that workers have little choice but to go along. She said, ''One big reason for off-the-clock work is that people are really worried about their jobs.''

Congress should not take away the right of these workers to recover the wages they are owed. Locking the courthouse door against them will hurt people such as Nancy Braun and Debbie Simonson, who worked at a national discount chain in Minnesota. They were constantly forced to work through their meal breaks and work off the clock. They and workers like them would not be able to recover their wages without a class action. We should not put more barriers in the way of their pursuit of justice.

The new Federal overtime rule that takes away overtime from so many Federal workers means that State-law overtime protections are more important than ever. This is particularly true in States such as Illinois, which have wage-and-hour laws similar to the Federal law, and have explicitly rejected the new Federal regulations.

With 8 million Americans out of work, and so many other families struggling to make ends meet, cutbacks in overtime are an unfair burden that America's workers should not have to bear. Overtime pay accounts for about 25 percent of the income for those who work overtime, and workers denied that protection routinely end up working longer hours for less pay.

Employers are all too ready to classify workers as not eligible for overtime. Warren Dubrow and Sam O'Lear discovered that problem when they worked in Orange County, CA, as service mangers at an automotive chain.

They often had to work more than 50 hours a week. Yet they were denied overtime pay because their employer called them ''managers.'' Never mind that they spent most of their time on nonsupervisory tasks like greeting customers, filling out order forms, and even changing tires. In State court, they and thousands of their fellow service managers won the right to overtime pay under State laws providing that workers who spend more than half their time on non-managerial tasks are entitled to overtime. Why should a Federal court be required to hear a case like that?

This isn't just a matter of moving civil rights cases and labor cases to a different forum. The real effect is much more harmful. Too often, moving these cases to Federal courts will mean they are never heard at all because strict Federal rules for class certification will prevent the plaintiffs from being approved as a class. If a Federal court decides not to certify the class, that is probably the end of the case, because many members of class action lawsuits can't afford to pursue their cases individually. Extended litigation in Federal court is too expensive for low wage workers and victims of discrimination, many of whom live paycheck to paycheck. Defendant companies are eager to throw sand in the gears of the law, and Congress shouldn't be encouraging them.

There has been some confusion during this debate about whether the class action bill would really move cases involving local events into Federal courts. Yesterday, the distinguished Senator from Utah questioned whether cases based on truly local events would really be affected by the class action bill. Let there be no doubt, it will happen if the current bill isn't modified.

If 100 Alabama workers bring a class action case under Alabama law for job discrimination that took place in Alabama, the employer can still use this bill to drag the case into Federal court if the employer company is incorporated outside the State. The same is true if low-wage workers are denied fair pay in their home State. As long as an employer is incorporated out of State, that employer can move the case into Federal court.

Section 4 of the bill allows a case to stay in State court only if a primary defendant is a ''citizen'' of the same State as the plaintiffs who brought the case. Companies are citizens of the State where they are incorporated, regardless of where they do business. As a result, plaintiffs who file a case in State court against a company with offices in their home State could quickly find their case in Federal court if the company is incorporated somewhere else.

That will affect a huge number of State law cases. To show the scale of this problem, let's look at the figures. More than 308,000 companies are incorporated in Delaware, including 60 percent of the Fortune 500 firms and 50 percent of the corporations listed on the New York Stock Exchange. Most of these companies also do business in many other States. But plaintiffs in those other States will not be able to file cases against these companies without being dragged into Federal court. That result violates basic fairness and common sense.

The Senator from Utah also suggested that this amendment isn't necessary to protect victims of discrimination because Federal courts have traditionally been defenders of civil rights.

Federal courts do perform the important job of protecting civil rights under Federal law and the U.S. Constitution. No one is questioning that. This amendment wouldn't change the fact that Federal civil rights claims can be decided by Federal courts. Nor would it exempt Federal civil rights or Federal wage and hour cases from the other requirements of this bill, such as the requirement that appropriate Government officials be notified of class action settlements.

This amendment does only one thing. It leaves in place the current rules governing removal of civil rights and labor cases filed under State or local laws. When States are ahead of the Federal Government in giving their citizens greater protection than Federal law—as several States have done in the area of genetic discrimination and discrimination based on marital status—State courts, not Federal courts, should interpret those laws.

The Senator from Utah suggested that this amendment isn't necessary because civil rights cases are filed under Federal laws. That is not accurate. There are many Federal class actions, but there are also many emerging areas in which victims of discrimination are seeking relief through State law class actions.

Sexual harassment cases are often brought in State courts under State law, like Kathleen Rudolph's case which I mentioned earlier.

Many civil rights class actions can only be brought under State law because there is no Federal law on the

particular issue involved. That is true for genetic discrimination. It is true for discrimination based on marital status, parental status, and citizenship status. Those types of discrimination are prohibited under many State laws, but not yet under Federal law.

If we don't let State courts develop these emerging protections under State laws, we are stacking the deck against workers and victims of discrimination. That is because Federal courts have said, time and time and time again, that they will interpret State laws narrowly.

The Court of Appeals for the Seventh Circuit, faced with opposing interpretations of State law, has ruled that it will ''choose the narrower interpretation that restricts liability.'' The First and Third Circuits have made similar rulings. There is no question that Federal courts are more likely than State courts to rule against plaintiffs in interpreting State law. Federal judges have said so themselves. Moving these cases into Federal courts will put a Federal thumb on the scale in favor of companies that violate the law.

We can't let that happen. I urge all of my colleagues on both sides of the aisle, and on both sides of the class action debate, to support this amendment. This legislation is supposed to reduce class action abuses, not add new abuses.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SESSIONS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SESSIONS. Mr. President, I rise in opposition to the Kennedy amendment that would exclude labor class actions from the scope of S. 5. At the outset, I have serious problems with any of the carve-out amendments to S. 5. These amendments are part of an effort by opponents of the bill to mischaracterize S. 5 as anticonsumer and to make it appear that some of these carve-outs and exceptions are necessary to prevent injustice. But, Mr. President, S. 5 is a good deal across the board. It is going to improve class actions for consumers, for workers, for our economy, and for businesses. Why should American workers be denied its benefits? Why would people who have a labor dispute not want to have that dispute settled in a Federal court under these superior procedures?

S. 5 will keep most labor cases in State court, anyway. The act includes two exceptions—the home State exception, and the local controversy exception—that are intended to keep most local class actions in State court. That means if local residents sue a local employer, the case will probably stay in State court, anyway.

Second, any labor class actions that will be removable to Federal court under the bill would still be governed by State law. This is not unusual. It is done all the time in Federal court. Nothing in the act changes substantive law in any way. It does not strip any worker of any right to seek redress for a labor violation. It creates no new defense for corporate defendants in time-shaving cases or otherwise. In short, workers who bring State labor claims after the Act passes—and I expect that it will—will have the exact same rights they have now.

Third, Federal courts have frequently certified overtime class actions. Some critics have said they are worried about Federal courts refusing to certify employee claims, but that is not true.

A recent study by the Federal Judicial Center found that class actions generally ''are almost equally likely to be certified'' in State and Federal court.

Certification, of course, is when a Federal court agrees that a class action should be tried as a class action. A lawyer can't go in and declare, I am representing a whole class of people, without some finding that there is a class that has been similarly wronged, or there is a similar litigation issue at stake.

A review of these decisions in Federal court found numerous examples of Federal judges certifying wage-labor class actions. For example, a Federal court in New York recently certified a State labor law class action on behalf of employees of a chain of natural food stores, many of whom were immigrants, who claimed they were not properly compensated for their overtime claims. The Federal judge accepted that case.

A Federal court in New York also certified a class of delivery persons and dispatchers at a drugstore chain who alleged they were not paid the minimum wage or overtime in violation of New York law. That was already accepted under current law, and it certainly would not change under this.

We made some efforts to improve the overtime laws in the Federal rules with regard to it. I have personally, as a private practitioner, represented two clients in wage cases involving overtime. The reason those cases were litigated is because the laws are not clear about what overtime is and what it is not. Nor is the law clear as to who is entitled to overtime and who is not. That needs to be clarified, and I salute the President for his attempt to do so. That is a parenthetical comment.

In a multidistrict litigation proceeding in the Federal court in Oregon, a Federal court certified seven State law classes brought by claims representatives against an insurance company, alleging they were improperly classified as exempt. In a case in Federal court in Illinois, the judge certified a class of employees who said their employer violated State law by failing to pay them for time spent loading trucks and driving to sites.

So the judge certified a class of employees who were making a claim in Federal court for violation of State labor laws. Judges will try that case based on whether it violated State law.

In a case in Washington State, the district court certified a class of meat processing plant employees who accused their employer of failing to pay them for work at the beginning and end of each day when they were on meal breaks. This is a constant source of litigation in these types of cases.

I would suggest that the argument that Federal courts will not certify class actions in wage and hour cases is not correct.

Finally, Mr. President, contrary to what has been suggested today, Federal courts have a long record of protecting workers in employment class actions. Congress has passed strong laws, such as title VII, that were specifically crafted to give workers access to Federal courts so they could bring employment discrimination cases in a fair forum.

We have always believed Federal court is a fair, objective forum for people who have been discriminated against, whether they claim employment rights or civil rights.

As a result, Federal courts already have jurisdiction over most employment discrimination and pension claims, and their record is in sharp contrast to courts such as in Madison County, IL, and Jefferson County, TX.

Which courts system oversaw the Home Depot gender discrimination case settlement that paid class members about $65 million? Which courts oversaw the $192 million Coca-Cola race discrimination settlement in which each class member was guaranteed a recovery of at least $38,000?

The answer to both is these were Federal court cases, not magnet State courts that to often look out for lawyers instead of consumers.

In sum, the only class of workers that will be negatively affected by S. 5 is the trial lawyers who will no longer be able to bring major nationwide class actions in their favorite county court. For everyone else, S. 5 is a win-win proposition that will put an end to class action abuse while protecting consumers who seek to bring legitimate class actions.

I urge my colleagues to reject this amendment and those other carve-out amendments that are being introduced.

Senator KENNEDY has also added to his amendment, the employer-worker rights cases, the civil rights carve-out. I would like to make a few points about the civil rights cases.

The amendment, as I understand it, would exclude from the reach of this bill all class actions involving civil rights—all of them. It should be defeated for several reasons.

First, an amendment that would affirmatively exclude civil rights cases from Federal jurisdiction would be contrary to a long tradition of encouraging the availability of our Federal courts to address civil rights claims.

Indeed, we have on the books several statutes that are intended to ensure that Federal civil rights cases can be heard in Federal courts. It has long been recognized that Federal courts, by virtue of their independence from political pressure, provide a more objective, hospitable forum for civil rights cases than State courts.

One statute that permits removal to Federal court for a broad range of civil rights actions is 28 U.S.C. 1443. A second statute, 28 U.S.C. 1343, provides broad Federal jurisdiction over a whole host of civil rights claims. For example, any action ''for injury to person or property or because of the deprivation of any right or privilege of a citizen of the United States,'' any action ''to recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights.''

Indeed, that section provides original Federal jurisdiction over any action ''to redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege, or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens.''

Would this amendment take those from State court? I do not think that is healthy, and I do not think that is what we should do.

Second, contrary to the sponsor's assertion, the bill will not discourage people from bringing class actions by prohibiting settlements that provide named plaintiffs full relief for their claims. The answer to this contention is simple: There is no such provision in the bill. Indeed, the bill does not contain any provisions that will change claimants' substantive rights to recovery in any respect. The ''consumer bill of rights'' provisions of the bill used to include a section that prohibited the payment of excessive ''bounties'' to class representatives. The rationale for that provision was to protect the class members. However, because of concern from the civil rights community about that provision being potentially misused, we have deleted that provision from the bill.

Finally, contrary to the position of the amendment's proponents, the bill will not impose new, burdensome and unnecessary requirements on civil rights litigants and the federal courts.

The provision of the bill requiring that certain public officials be notified about proposed settlements will not delay the approval of settlements. The period allowed for commentary from public officials is consistent with the time that it normally takes to get settlement notices to class members and conduct the ''fairness hearing'' process to obtain judicial approval of a proposed settlement.

The whole purpose of this additional requirement is to ensure that proposed settlements are fully scrutinized to protect the interests of the unnamed class members.

This bill protects the rights of civil rights plaintiffs.

It should not be amended.

The PRESIDING OFFICER. The Senator's time has expired en bloc.

Mr. SESSIONS. I thank the Chair. I urge the amendment be defeated. I yield the floor.

The PRESIDING OFFICER. Who yields time?

The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, how much time remains?

The PRESIDING OFFICER. Three minutes remain.

Mr. KENNEDY. I yield myself such time.

Mr. President, a point has been raised by those who are opposed to this amendment that there have been examples where issues affecting working conditions have been considered in the Federal courts and, therefore, we should not be so concerned. That misses the point.

The fact is, we know of a number of cases that have been referred to Federal courts and the Federal courts have been uncertain as to which way to rule. Therefore, they have made a judgment consistently to have the narrowest possible interpretation. Narrowest possible interpretation means workers are going to get shortchanged on wages and working conditions. That is what it means.

Why take it away from the local jurisdiction? We know the same argument with regard to civil rights. We all understand and respect the fact that when it comes to constitutional rights or interpreting the laws that have been passed here with Federal guarantees there is going to be Federal jurisdiction. But that ignores the basic fact that in a number of the States there have been enhancements of civil rights. The States have made those judgments. Judges understand that. They understand what has been considered by the legislature. They know what the temperament of the legislation is all about.

Why take away those protections? This legislation does so. Quite frankly, those areas of workers' rights and civil rights were never really thought about as being the major reason for this legislation. They represent about 10 percent of the total class action, but they do involve protecting workers and workers' rights and they do involve protecting the basic civil rights which the States have enhanced over the Federal laws.

Why are we going to take away from the States the opportunity, the power, the authority, to go ahead and interpret that? That is going to be unfair to those individuals who ought to have the protection. This is going to provide less protection for workers, less protection for their wages and their working conditions, and it is going to put at risk the kinds of protections that States have decided should be there to protect their citizens in the area of civil rights. It makes no sense, and I would certainly hope that our amendment would be accepted.

I yield back the remainder of my time.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, the hour of 4 has arrived. Pursuant to the previous order, we will now vote on the Kennedy amendment with a stacked vote on the Feinstein-Bingaman amendment to follow immediately.

The PRESIDING OFFICER (Mr. COBURN). Under the previous order, the question is on agreeing to amendment No. 2 offered by the Senator from Massachusetts.

Mr. SPECTER. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. The following Senator was necessarily absent: the Senator from New Hampshire (Mr. SUNUNU).

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 40, nays 59, as follows:

[Rollcall Vote No. 6 Leg.]

YEAS—40

Akaka	Feingold	Murray
Baucus	Harkin	Nelson (FL)
Bayh	Inouye	Obama
Biden	Jeffords	Pryor
Bingaman	Johnson	Reed
Boxer	Kennedy	Reid
Byrd	Kerry	Rockefeller
Cantwell	Landrieu	Salazar
Clinton	Lautenberg	Sarbanes
Conrad	Leahy	Schumer
Corzine	Levin	Stabenow
Dayton	Lieberman	Wyden
Dorgan	Lincoln	
Durbin	Mikulski	

NAYS—59

Alexander	DeWine	Martinez
Allard	Dodd	McCain
Allen	Dole	McConnell
Bennett	Domenici	Murkowski
Bond	Ensign	Nelson (NE)
Brownback	Enzi	Roberts
Bunning	Feinstein	Santorum
Burns	Frist	Sessions
Burr	Graham	Shelby
Carper	Grassley	Smith
Chafee	Gregg	Snowe
Chambliss	Hagel	Specter
Coburn	Hatch	Stevens
Cochran	Hutchison	Talent
Coleman	Inhofe	Thomas
Collins	Isakson	Thune
Cornyn	Kohl	Vitter
Craig	Kyl	Voinovich
Crapo	Lott	Warner
DeMint	Lugar	

NOT VOTING—1

Sununu

The amendment (No. 2) was rejected.

AMENDMENT NO. 4

The PRESIDING OFFICER. Under the previous order, there are now 2 minutes of debate equally divided prior to a vote in relation to the Feinstein amendment No. 4.

The Senator from California.

Mrs. FEINSTEIN. Mr. President, I understand I have 1 minute to discuss

the amendment before the Senate. This amendment is on behalf of Senator BINGAMAN and myself. It essentially deals with an issue that emerged in the consideration of the class action bill.

I am a supporter of the class action bill. However, there is a loophole. That loophole is with class action consumer-related cases. They could go to a Federal judge, and the Federal judge could say the various laws of the 50 States are so complex he cannot decide on a given law. Then the class action remains in limbo. It cannot go back to State court.

This is a compromise between Senator BINGAMAN and myself. It essentially says the judge can either issue subclassifications as determined necessary to permit the action to proceed or, if that is impractical, look at other courses, including the plaintiff's State laws.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, there is no loophole in this bill. This amendment would force the Federal courts to certify dissimilar and unmanageable claims, which is the problem occurring in certain magnet State courts right now. This is a fairness and a due process problem. This is not really a compromise at all. It defeats the purpose of the bill.

The amendment tells courts to ignore State law and forget about fairness just so a class can be certified. It would require courts to subclass even where it would be unwieldy and impractical.

If you want to stop the abuses and pass class action reform, you will oppose this amendment. This underlying bill is the compromise.

Mr. CARPER. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the amendment.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MCCONNELL. The following Senator was necessarily absent: the Senator from New Hampshire (Mr. SUNUNU).

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 38, nays 61, as follows:

[Rollcall Vote No. 7 Leg.]

YEAS—38

Akaka	Feingold	Nelson (FL)
Baucus	Feinstein	Obama
Biden	Harkin	Pryor
Bingaman	Inouye	Reed
Boxer	Johnson	Reid
Byrd	Kennedy	Rockefeller
Cantwell	Kerry	Salazar
Clinton	Landrieu	Sarbanes
Conrad	Lautenberg	Schumer
Corzine	Leahy	Specter
Dayton	Levin	Stabenow
Dorgan	Mikulski	Wyden
Durbin	Murray	

NAYS—61

Alexander	DeWine	Lugar
Allard	Dodd	Martinez
Allen	Dole	McCain
Bayh	Domenici	McConnell
Bennett	Ensign	Murkowski
Bond	Enzi	Nelson (NE)
Brownback	Frist	Roberts
Bunning	Graham	Santorum
Burns	Grassley	Sessions
Burr	Gregg	Shelby
Carper	Hagel	Smith
Chafee	Hatch	Snowe
Chambliss	Hutchison	Stevens
Coburn	Inhofe	Talent
Cochran	Isakson	Thomas
Coleman	Jeffords	Thune
Collins	Kohl	Vitter
Cornyn	Kyl	Voinovich
Craig	Lieberman	Warner
Crapo	Lincoln	
DeMint	Lott	

NOT VOTING—1

Sununu

The amendment (No. 4) was rejected.

The PRESIDING OFFICER. The majority leader.

Mr. FRIST. Mr. President, very briefly, a number of Members have inquired about the schedule. It is my understanding that shortly Senator FEINGOLD will be offering his amendment, and then we will debate that amendment tonight. We will have the vote on that amendment tomorrow at some time. We will have discussions with the Democratic leadership and Senator FEINGOLD in terms of time. Thus, we will have no more rollcall votes tonight. The next rollcall vote I expect will be on the Feingold amendment sometime tomorrow.

With that, the prospects of finishing this bill tomorrow at a very reasonable time—hopefully, midafternoon or early afternoon—are very good, very positive. There are lots of other discussions and issues that have to be dealt with, and I encourage they be dealt with later this afternoon and into the evening, tonight, and tomorrow morning so we can bring this bill to closure.

We were just remarking, it has been a real pleasure, in terms of the approach of this bill—a bipartisan bill, amendments being debated in a timely way, people being able to express themselves—but bringing the bill to closure at an appropriate point, to me, is very constructive and very positive. I thank my colleagues for that.

Thus, the next rollcall vote will be tomorrow at some point. No more rollcall votes tonight.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, I ask unanimous consent that the pending business be set aside.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 12

Mr. FEINGOLD. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Wisconsin [Mr. FEINGOLD] proposes an amendment numbered 12.

Mr. FEINGOLD. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To establish time limits for action by Federal district courts on motions to remand cases that have been removed to Federal court)

On page 22, strike line 22 and all that follows through page 23, line 4, and insert the following:

''(1) IN GENERAL.—Section 1447 shall apply to any removal of a case under this section, except that—

''(A) not later than 60 days after the date on which a motion to remand is made, the district court shall—

''(i) complete all action on the motion; or

''(ii) issue an order explaining the court's reasons for not ruling on the motion within the 60 day period;

''(B) not later than 180 days after the date on which a motion to remand is made, the district court shall complete all action on the motion unless all parties to the proceeding agree to an extension; and

''(C) notwithstanding section 1447(d), a court of appeals may accept an appeal from an order of a district court granting or denying a motion to remand a class action to the State court from which it was removed if application is made to the court of appeals not less than 7 days after entry of the order.''

Mr. FEINGOLD. Mr. President, if we are going to pass this bill, I think we should do all we can to ensure citizens get their day in court promptly, whether it is in a Federal court or a State court. We are all familiar with the adage that justice delayed is justice denied. So we cannot let this bill become a vehicle for delay.

The bill includes complicated requirements for determining which cases can be removed to Federal court. We need to make sure the cases that belong in State court under this bill do not get caught up in some kind of procedural wrangling that would effectively deny justice to the plaintiffs through delay.

Current Federal court practice allows a case filed in a State court to be automatically removed to Federal court by the filing of a notice of removal. If a party believes the case does not belong in Federal court, it can then remove in Federal court to remand or return the case to the State court.

Under current law, when a Federal district court decides to grant a motion to remand the case back to State court, right now that order is not appealable. S. 5, the bill before us, makes such orders appealable for the first time in over a century. Due to the efforts of Senator SCHUMER, Senator DODD, and Senator LANDRIEU, the bill requires the court of appeals to decide appeals of remand orders within 60 days unless the parties agree otherwise. This 60-day time limit recognizes that there is a potential for delay that these newly permitted appeals could cause and that there is a need for courts to resolve quickly at the appellate level the issue of where a case will be heard.

I strongly support this idea of a time limit for decisions on appeals. But it

also highlights another great potential for delay that is caused by this bill. Before that 60-day clock begins to run on an appeal, the district court must first rule on the motion to remand the case to State court. Unfortunately, some courts take a great deal of time to decide motions to remand. The result is simply putting a case in limbo.

Take, for example, the case of Lizana v. DuPont. In this case, cancer victims in Mississippi allege they became sick because they lived next door to a DuPont manufacturing plant. DuPont then removed the case to Federal court on January 21, 2003, and the victims then moved to remand the case to State court. The Federal district court finally granted the victims' motion, a year after the motion to remand was filed.

In an Oklahoma case called Gibbons v. Sprint, a group of consumers filed a case against Sprint for installing cable lines across their land without giving proper notice or paying compensation to the landowners. Sprint then removed the case to Federal court. A remand motion was filed on October 4, 1999, and was granted, but only after a delay of nearly a year.

These are real-life examples of how an improper removal can end up delaying a case for a significant period of time. By rewriting diversity jurisdiction rules in this bill, we are handing defendants a tool for delay, even if they do not actually qualify to have their cases removed. So we need to make sure that in cases that are removed from State courts as a result of this bill, remand motions are decided promptly. At the very least, we should require that the courts review these motions and decide them quickly, if they can.

The amendment that I offered in the Judiciary Committee would have placed a 60-day time limit on district court consideration of motions to remand. This is the same limit that the new bill places on courts of appeals when decisions on motions to remand are appealed.

My committee also adopted the other components of the bill's provision on appeals. It allowed all parties to agree to an extension of any length and allows the court to take an additional 10 days for good cause shown. If courts of appeals are going to be required to rule on appeals of decisions on motions to remand in short order, I thought we should require district courts to make those decisions just as quickly. That way, we could be sure that removals will not be used as a tool for delay.

On Monday, the Judicial Conference sent a letter to the chairman of the Judiciary Committee concerning my amendment. Not surprisingly, it opposes the amendment. The Judicial Conference historically has opposed, as it says in its letter, ''statutory imposition of litigation priority, expediting requirements, or time limitation rules in specified types of civil cases.''

In other words, judges do not like being told by Congress how to prioritize their cases or how quickly they should do their work. And I do not blame them. But we do it when we think it is important. And here we are sending a potentially large new number of cases to Federal court. We are increasing the workload of the Federal courts, making it more likely cases will be delayed because of crowded dockets.

What the committee amendment did was to require the courts to quickly assess whether a case belongs in Federal court, whether this bill applies to it. I do not think that amendment of mine was unreasonable at all.

On the other hand, I am sympathetic to the concern expressed by the Judicial Conference that in some cases 60 days may not be enough time to decide the motion. Its letter points out that, in some cases, an evidentiary hearing might be required and the time to fully brief the motion may exhaust a portion of this 60-day period. My committee amendment allowed for an automatic 10-day extension and an extension of any amount if both sides agree.

I have read the letter from the Judicial Conference and I am trying to come to a reasonable solution. I accept the possibility that the changes I have made to date perhaps are not enough. So I am not wedded to the 60-day period itself. What I am wedded to is the idea that these motions should not be permitted to languish unexamined for months and months. I have made further modifications to the amendment that I offered in committee in the hope that the sponsors of the bill would be willing to work with me to reach an accommodation on this issue.

The amendment I have proposed on the floor requires the district court to do one of two things within 60 days of a motion to remand being filed. First, the court can decide the motion. I hope many, if not most, motions to remand could be decided that quickly. But under my amendment before the body, the court has another option under this amendment. It can issue an order within a 60-day time period indicating why a decision within that time cannot be made. Perhaps the reason is that the factual record cannot be completed within that time, or that other pressing matters must receive priority in light of the court's full docket. The amendment does not presume to specify what reasons are good or adequate reasons. The justification is entirely within the court's discretion, but it must give some explanation, some reason in an order that would be issued within this 60-day period.

If such an order is issued, the court is then allowed, under the amendment before the body, to issue a decision up to 180 days after the filing of the motion. That gives the court a full 6 months to make a decision. I argue that should be enough time for even the most complex of remand motions. Once again, an extension of any length is permitted if all the parties to the case agree.

I believe these changes more than address the concerns raised by the Judicial Conference, but they also make sure that a remand motion will not languish for more than 6 months because the court simply has not gotten around to it.

My hope is that the requirement that an order be issued within the 60 days will make it more likely that the court will devote enough time to the motion to realize that it is possible for a final decision to be reached within that time. If more time is needed, 180 days should be more than sufficient.

A 6-month time limit will not cause undue hardship to our Federal courts. For those who doubt that removal will become a tool for delay, let me call their attention to testimony before the House Judiciary Committee by legal scholar Theodore Eisenberg of Cornell Law School. Professor Eisenberg testified that his research has found that even though the number of class action lawsuits is declining, efforts to remove cases are not. More importantly, he found that remand rates are increasing over time.

In recent years, more than 20 percent of diversity tort cases removed to Federal court have been remanded to State court. Now, that means that one out of five removals are improper. We have no way of knowing what will happen under this bill. Perhaps some of the 20 percent will now be properly removed to Federal court. But given the complexity of the bill's new requirements, I think it is safe to assume that a significant number of removals will still turn out to be improper.

Once a district court decides to remand a case, that remand order will almost certainly be appealed. Plaintiffs with legitimate class actions in State court therefore need the additional protection provided by my amendment in order to avoid being unfairly harmed by this bill. Some time limit on district court consideration of remand motions in class action cases is critical to minimize the denial of justice to citizens who legitimately turn to the State courts, even under this bill, to have their grievances heard.

I know there is tremendous opposition to any attempt to perfect this bill on the floor because of concerns about the other body, but I implore my colleagues who support the bill to not let their no-amendment strategy prevent them from taking a hard look at this problem. Do we want to leave unaddressed the possibility that a case could sit in Federal court with a motion to remand pending for a year or more, only to have the case properly returned to State court once the court finally takes a look at the motion? Is that a just result?

I am convinced that we can work at something if my colleagues will simply take a quick look at this issue with an open mind. This amendment does not even come close to blowing this bill up. It is certainly not a poison pill. It is just an effort to make the bill work better, and surely the supporters of this bill should have the flexibility to do that.

This bill is called the Class Action Fairness Act. To be fair to people seeking justice from courts, we should ask the courts to act quickly on remand motions at both the court of appeals and district court levels. So I urge my colleagues to support this amendment.

I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DODD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DODD. Mr. President, I begin by thanking the leadership. I thank Senator REID of Nevada particularly because, as my colleagues know, the minority in this institution, even a minority of 1, can make life difficult for a majority even of 99.

The Framers of the Constitution created an institution that would make sure that the rights of minorities would be protected in this body. Contrary to his own substantive feelings about the matter before us, the distinguished Democratic leader has made it possible, because of the unanimous consent agreement entered into with the distinguished majority leader, for this matter to proceed. I also thank Senator FRIST, the majority leader, for working out that arrangement so that we can deal with the matter before us.

As someone who a year and a half ago negotiated an agreement that was satisfactory to many, not to all, I am pleased that we are within a day or so of adopting this very important legislation. We would not be able to do that were it not for the leadership shown by the minority and the majority in allowing this amendment process to go forward. So I begin there.

I commend my colleagues who have offered amendments. They have offered germane and relevant amendments to this bill that have at the very least some kernels of sound judgment and good ideas to them. I regretfully disagree with my colleagues substantively and have expressed that in the RECORD. I know my colleague from Delaware, Senator CARPER, who has spent a lot of time on this legislation, has been more deeply involved in this question than almost anyone in this body and has listened very carefully to all of those who have argued their amendments and considered them thoroughly. So I thank them for offering these ideas. I do not suggest that I would necessarily be opposed to all of these amendments under different circumstances, although I think there are substantive arguments against them.

I say to one of my dearest friends in this body—and I know we call each other good friends, but RUSS FEINGOLD is one of my best friends in the Senate, and it is a rarity when he and I are on different sides of an issue. I am not comfortable disagreeing with my friend from Wisconsin because I admire him so much, but there is a substantive disagreement over having mandatory time requirements.

The Judicial Conference of the United States, in a letter dated February 7, addresses specifically this amendment and urges our colleagues not to impose a time certain. The Senator from Wisconsin makes a strong argument on having some predictability, and I agree with him about predictability for all involved, for defendants and plaintiffs, but there is a danger in making the predictability so certain that it makes it difficult for the judicial process to necessarily work in a fair and balanced way. Because there are so many extenuating circumstances which can complicate a given mandatory time requirement, it can actually work adversely to plaintiffs or defendants in the case, and I know my colleagues are aware of that.

A sound case can be made for Senator FEINGOLD's amendment. There was a sound argument on the other side as well as to why this can be dangerous. The Judicial Conference has come down rather strongly in a letter in opposition to a mandatory time requirement. Rather than go through and read this whole letter, I ask unanimous consent that the letter from the Judicial Conference dated February 7 be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

JUDICIAL CONFERENCE OF
THE UNITED STATES,
Washington, DC, February 7, 2005.

Hon. ARLEN SPECTER,
Committee on the Judiciary, U.S. Senate, 224 Dirksen Senate Office Building, Washington, DC.

DEAR MR. CHAIRMAN: I write on behalf of the Judicial Conference of the United States, the policy-making body for the federal courts, to express the judiciary's opposition to the amendment offered, and later withdrawn, by Senator Russ Feingold to the Class Action Fairness Act of 2005 (S. 5) during the Senate Judiciary Committee's business meeting on February 3, 2005. That amendment would require the district court to complete all action on a motion to remand a class action case not later than 60 days after the date on which such motion was made, unless ail parties agree to an extension or the court grants an extension up to 10 days for good cause shown and in the interests of justice. As further explained below, the Judicial Conference opposes the imposition of mandatory time frames for judicial actions. Because the amendment may be considered further as S. 5 moves to the floor of the United States Senate, I wanted to provide you with these views as soon as possible.

The Judicial Conference strongly opposes the statutory imposition of litigation priority, expediting requirements, or time limitation rules in specified types of civil cases brought in federal court beyond those civil actions already identified in 28 U.S.C. 1657 as warranting expedited review. The Conference also strongly opposes any attempt to impose statutory time limits for the disposition of specified cases in the district courts, the courts of appeals, or the Supreme Court. (Report of the Proceedings of the Judicial Conference of the United States, September 1990, p. 80.) Section 1657 currently provides that United States courts shall determine the order in which civil actions are heard, except for the following types of actions that must be given expedited consideration: cases brought under chapter 153 (habeas corpus petitions) of title 28 or under 28 U.S.C. §1826 (recalcitrant witnesses); actions for temporary or injunctive relief; and actions for which ''good cause'' is shown.

The expansion of statutorily mandated expedited review is unwise for several reasons. Individual actions within a category of cases inevitably have different priority requirements, which are best determined on a case-by-case basis. Also, mandatory priorities and expediting requirements run counter to principles of effective civil case management. In addition, as the number of categories of cases receiving priority treatment increases, the ability of a court to expedite review of any of these cases is necessarily restricted. At the same time, district courts must meet stringent deadlines for the consideration of criminal cases, as required by the Speedy Trial Act.

From a practical standpoint, it may be difficult in many situations to meet the 60-day deadline under Senator Feingold's amendment. The filing of a remand motion following a notice of removal pursuant to 28 U.S.C. §1447 would trigger the 60-day period. Under current local rules of practice in the district courts, a motion to remand may not be fully briefed and ready for court consideration until a substantial portion of the 60-day deadline has expired. In addition, the district court must consider the criteria listed as a threshold for federal court jurisdiction under S. 5 before deciding the motion to remand, which may require the court to hold an evidentiary hearing with witnesses.

The judiciary shares Senator Feingold's desire to facilitate the consideration of cases. However, for the reasons stated above, the judiciary believes the amendment is unwise. Nevertheless, if Congress determines that a specific reference beyond 28 U.S.C. §1657 is appropriate, then the following alternative language is suggested for the Committee's consideration as a replacement for subsection (A) on pages 1 and 2 of Senator Feingold's amendment:

''(A) the district court shall complete all action on a motion to remand as soon as practicable after the date on which such motion was made; and''

OR

''(A) the district court shall expedite all action on a motion to remand to the greatest extent practicable; and''.

Similar language has been used by Congress in other legislation and is now found within the draft asbestos bill being discussed in your Committee. It has reminded federal judges of the importance Congress has given to the resolution of the particular matter without precluding a fair hearing of the issues underlying the motion or action.

Thank you for your consideration of the above comments. If you have any questions, please contact Mike Blommer, Assistant Director, Office of Legislative Affairs, at 202–502–1700.

Sincerely,

LEONIDAS RALPH MECHAM,
Secretary.

Mr. DODD. I am not going to go through each and every amendment, but the amendments offered by my friends, Senators KENNEDY, BINGAMAN, and FEINSTEIN, also make good points, but as the Senator from Delaware and others have pointed out there are substantial and substantive reasons why those amendments are even incorporated already under the legislation

and thereby covered or that would undo what we have attempted to achieve in this legislation.

I pointed out the other day that back in the fall of 2003—I believe in October—a group of us who objected to the cloture motion and provided the margin of difference that day from invoking cloture provided the necessary votes to secure passage of the then as written class action reform bill. I think we were right in doing so. That bill, I believe, was excessive. There was a real danger it would have undone a lot of good law in this country which made courts accessible to legitimate class action plaintiffs.

We were asked, a small group of us who were willing to work on this issue, to try to come up with some compromises, and we did. We submitted a letter to the majority leader saying there were four items that we thought needed to be addressed in that bill. We then sat down and negotiated not only the 4 items but 8 items additional to the 4, so we came back with 12 improvements to that bill, far more than we were asked to do by those concerned with legislation. I am not suggesting that covered the universe. Obviously, other ideas occurred in the last year and several months since that was struck. I was disappointed we didn't bring up the reform bill in January of last year, as the leader announced we would do. We lost an entire year on this matter, where we could have had the same arrangement we agreed to over a year ago. Nonetheless, we are back here with that same agreement.

Across the country, those who have had a chance to look at this legislation have spoken very extensively in favor of it. In fact, some 109 editorials across the Nation, from publications, daily publications literally across the Nation in virtually every jurisdiction of the country, have come out and strongly endorsed this compromise package. I have a list of the 109 editorial comments made in support of this legislation, from publications that have reputations of being center, right, and left. It transcends the traditional ideological differences one might find in our daily newspapers. It is instructive to those of us anxious to know what those editorials have to say about this bill.

I ask unanimous consent that list be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

109 EDITORIALS SUPPORTING CLASS ACTION REFORM

The Washington Post

Get Tort Reform Right—January 10, 2005
Reforming Class Actions—June 14, 2003
Making Justice Work—November 25, 2002
Restoring Class to Class Actions—March 9, 2002
Actions Without Class—August 27, 2001

The Wall Street Journal

Tort Reform Roadmap—January 27, 2005
Class-Action Showdown—July 8, 2004
Class-Action Showdown—June 12, 2003
Mayhem in Madison County—December 6, 2002
Miracle in Mississippi—December 3, 2002
Class War—March 25, 2002

Chicago Tribune

Mr. Bush goes to Collinsville—January 5, 2005
American as apple pie—July 7, 2004
Madison (just another) County—June 18, 2004
The Judicial Hellhole—March 11, 2004
The class-action money chase—June 18, 2003
The judges of Madison County—September 6, 2002

Financial Times

Class Action Repair—September 18, 2003
Out of Action—March 18, 2002

USA Today

Class-action plaintiffs deserve more than coupons—October 9, 2002

Akron Beacon Journal

Classier act—May 2, 2003

Baltimore Sun

No-Class Action—October 26, 2003

Bangor Daily News

Class-action reform—June 3, 2004
Action on Lawsuits—September 17, 2003

Bloomington Pantagraph (Bloomington, IL)

Congress should approve class-action suit reforms—June 30, 2004

The Buffalo News

Class Action Compromise—December 6, 2003
Class-Action Lawsuits—October 14, 2003
Protection for plaintiffs—July 31, 2002

Business Insurance

Tort Reform Takes Time—July 19, 2004
Tort Reform Deserved More—January 26, 2004
Redouble Effort in Tort Reform Battle—October 27, 2003
Stick With Original Class Action Bill—September 29, 2003
Maintain Class-Action Reform Push—September 8, 2003

The Christian Science Monitor

Reforming class-action suits—April 17, 2003

Contra Costa Times (Walnut Creek, CA)

Class-Action Reform—July 9, 2004

Crain's New York Business

A Class Action for Schumer—September 1, 2003

Daily Jefferson County Union

Take Bite Out of Frivolous Suits—October 20, 2003

The Des Moines Register

Pass the class-action reform—July 14, 2004
Reform class actions—February 14, 2003

The Florida Times-Union (Jacksonville, FL)

Congress: Minority Rules—July 11, 2004
Progress Is Seen—December 16, 2003
Class Warfare—September 8, 2003
Always Alert—June 17, 2003

The Gazette (Cedar Rapids, Iowa)

Clamp down on class-action suits—May 19, 2004
More class-action suits should be federal cases—July 10, 2002

The Gazette (Colorado Springs, CO)

Our View: A lawyer's paradise—July 5, 2003

Greensboro News & Record

Class-Action Lawsuit Abuse Less Under Senate Rewrite—January 12, 2004

The Hartford Courant

Abuse of the Courts—June 16, 2004
Compromise on Class Action—December 31, 2003
Sen. Dodd's Crucial Vote—October 26, 2003
Stop Class-Action Abuses—August 22, 2003
The class-action racket—July 15, 2002

The Herald (Everett, WA)

Class-action reform needed to curb abuse—June 25, 2003

The Indianapolis Star

Lawyers Get Rich, Plaintiffs Get Coupons—September 2, 2003
Class-action suits shop the system—May 15, 2002

Investor's Business Daily

A Shorter Leash for Trial Lawyers—January 6, 2005
Any Tort In A Storm—December 18, 2003

King County Journal (Bellevue/Kent, WA)

Our View: Class-action reform needs Senate action—July 8, 2003

Knoxville News Sentinel

Class action act was reasonable legislation—October 27, 2003

Las Vegas Review-Journal

Tort Reform—June 2, 2004
Coupon Clippers—January 12, 2004
A real class act—June 13, 2003

Lincoln Journal Star (Lincoln, Neb.)

Take small step toward legal reform—June 30, 2003

Mobile Register

Senate Has a Chance To Limit Lawsuit Abuse—August 16, 2003

Montgomery Advertiser

Negotiate Fair Bill on Lawsuits—October 27, 2003

Newsday (Long Island, NY)

Lawsuit reform is within reach; Stop stalling class-action remedy—July 9, 2004
A Little Compromising Helps Bill on Mass Lawsuits—December 4, 2003
Senate Should Change the Rules for Mass Lawsuits—November 5, 2003
Congress should stem abuses of class-action lawsuits—March 3, 2003

New York Daily News

End Lawyers' Shopping Spree—September 28, 2003

New York Sun

Breaking With the Bar—November 20, 2003
Senators With Class?—October 22, 2003

Northwest Arkansas Business Journal

Class-action reform a must—May 27, 2002

The Oklahoman

So Long to Reform—October 29, 2003

Odessa American (Odessa, Texas)

Lawsuit reform seems necessary—July 8, 2003

Omaha World-Herald

A Final Judgement—May 20, 2004
Ready for (Class) Action—February 12, 2004
Class-action bill sinks—October 27, 2003
Reshaping Class Action Suits—October 13, 2003
Balance the Scales—July 25, 2003
Shopping days may be over—June 16, 2003
Fix class-action abuse—July 29, 2002

The Oregonian

Approve class-action reform—July 29, 2002

Orlando Sentinel

A Needed Crackdown: It's Important for Congress to Revive the Effort to Control Class-Action Abuse—January 28, 2005
Congress Should Approve a Plan To Reform the Class-Action-Lawsuit System—June 1, 2004
Cut Down On Judge-Shopping—February 1, 2004
Stop abuse of class actions—June 23, 2003

Pittsburgh Tribune-Review

No-class action—July 12, 2004

The Providence Journal

Crimes against consumers—May 19, 2003

Stop these corrupt suits—April 6, 2002

Rocky Mountain News (Denver, Colorado)

Pay the Lawyers in Coupons, Too: Class-Action Excesses—July 25, 2004

Sun Journal (Lewiston, Maine)

Reform Class Actions—September 7, 2003

St. Louis Post-Dispatch

Madison County: Bush in the ''hellhole''—January 5, 2005
Feathering the Legal Nest—April 6, 2004
Tilted Scales—January 23, 2004
The Lawyers Win Again—October 24, 2003
Derail Madco's gravy train—October 2, 2003
Lawsuit heaven—January 13, 2003

The Santa Fe New Mexican

Time for a tad of tort reform—July 16, 2003

Spokane Spokesman-Review

Class Action Bill Needs Action Now—July 20, 2004
Unclassy Action in Need of Reform—September 3, 2003

Times Union (Albany, NY)

Class Action Victory—December 3, 2003
Class Action Showdown—November 10, 2003
Fix class-action law—July 28, 2002

Tyler Morning Telegraph

Small firms new target in lawsuit abuse crisis—June 23, 2003

Vero Beach Press-Journal

Class-action reform delayed by Democrats' stalling tactics—July 14, 2004
No Class—October 24, 2003

Washington Times

Ushering thru tort reform—July 7, 2004

Wisconsin State Journal

Put Fair Limits on Group Lawsuits: Class-Action Abuses Enrich Lawyers While Yielding Pennies for Plaintiffs—June 7, 2004

Mr. DODD. As a source of some parochial pride, I ask unanimous consent the entire editorial in the Hartford Courant of Hartford, CT, be printed in the RECORD supporting this legislation. It is entitled ''Reining In Class-Action Abuses.''

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Hartford Courant, Feb. 8, 2005]

REINING IN CLASS-ACTION ABUSES

Congress finally appears ready to curtail the worst abuses in class-action lawsuits.

The House and Senate have debated the issue for a decade. Now the Senate is prepared to vote, possibly this week, on a bipartisan compromise engineered by Democratic Sen. Christopher Dodd of Connecticut and others. President Bush has indicated he will sign the measure.

Lawyers long have had a field day with class-action lawsuits. They sometimes solicit clients and then shop for friendly state courts with reputations for handing down huge monetary awards. Too often, though, plaintiffs end up with pennies, while the lawyers take home millions of dollars.

Under a bill that cleared the Senate Judiciary Committee last week, most interstate class-action lawsuits in which claims total more than $5 million would appropriately be moved to federal courts.

Truly local lawsuits involving plaintiffs and defendants within a state would properly remain in local courts.

The bill, known as the Class Action Fairness Act, has other useful provisions, such as tighter controls on so-called coupon settlements, in which consumers receive discount coupons instead of cash. Also, there would be better scrutiny of settlements in which class members actually lose money.

Critics say the bill would unfairly penalize consumers because federal consumer-protection laws are weak. There still is time to address this shortcoming. But lawmakers must resist the temptation to add extraneous amendments—such as one to increase the salaries of federal judges—that would doom the bill.

The measure enjoys broad support in the House, which gave it overwhelming approval last year but which must vote again.

Once Congress acts on class-action lawsuits, it can turn its attention to two other urgent lawsuit abuses—medical malpractice and asbestos.

Mr. DODD. Let me say again to my colleagues here, many of whom I know have offered amendments that have not succeeded in the past, I know it can be disappointing to work on the amendment and not get the necessary votes. But let me remind my colleagues, those who believe—and that is most of us here—that clearly the class action situation in this country cries out for reform, that this bill is a court reform bill rather than a tort reform bill. No courts are closing their doors to class action plaintiffs at all. But the situation had gotten out of hand. I think most of us here agree with that.

We have written an improved bill—from both a plaintiff's perspective as well as a defendant's perspective. We can have access to courts, get good judgments, and see to it that victimized plaintiffs will receive the compensation they deserve as a result of a class action decision in their favor.

I suggest to those who would have liked to have us add additional amendments here that there was a very real danger indeed that had we not stuck with the agreement reached almost a year and a half ago, the original bill would have come back or a bill adopted in the other body would have been the vehicle chosen as the vehicle for class action reform. I believe that would have been a mistake.

I know there are colleagues who are disappointed that some of us did not support them in their efforts. I state there are substantive reasons that we did not, but also there is the reason that had we done so, this matter would have been opened and the results would have been a bill that would have been dangerous. I would have opposed it, but I think the votes are here to carry it. It is always a tough call, and I am not going to suggest otherwise. Those are the kinds of decisions you have to make in a legislative body with 99 other colleagues, 435 in the other body, and a President. We are dealing with a legislative form of government. Unfortunately, as much as we would like to write our own bills and have everybody go along and agree with our ideas, that is not the way the process works.

We think we have a substantially improved piece of legislation, one that I heartily endorse. We will discover in time if there are any shortcomings, but by and large I believe we have written a good bill.

I mentioned in his absence my friendship with the Senator from Wisconsin, talking about his amendment. As I said earlier, there is more than just a kernel of truth in what he suggests. There is an argument on the other side that I know my colleague, as a very distinguished member of the bar, will appreciate. I will not be able to support his amendment, but nonetheless I appreciate the point he is making about certainty and predictability, which is not an irrelevant issue when it comes to our courts.

For those reasons, I appreciate the fact that a majority of us here in a bipartisan way—not overwhelmingly bipartisan but a bipartisan fashion—have rejected the amendments offered by our colleagues today. My hope is that a similar result will occur with remaining amendments, that we can have final passage of this bill, that the leadership of the House will do what they said they were going to do, and that is to embrace this compromise package, and that we will be able to send this bill to the President for his signature and make a major step forward in reforming our courts so that class actions can proceed in the way the Framers intended in the Constitution, which is fair to plaintiffs and defendants alike.

I yield the floor.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, let me say I appreciate the comments of my friend from Connecticut, as I always do. I just want to point out that the amendment I have offered, as opposed to the one I offered in committee, has increased the time for deciding these motions from 60 days to 180 days. Surely 6 months is plenty of time, even in a complicated motion. So I believe the concerns of the Judicial Conference have been addressed, unless we in the Congress are going to go along with the idea there should be no time limit at all.

At this point I simply leave it at that, hoping that prior to the time of actually voting on the amendment tomorrow I would have a few minutes to repeat and reiterate my position on this amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. CARPER. Mr. President, while Senator DODD is still on the floor, and Senator FEINGOLD as well, let me first of all say to Senator DODD that we would not be here today with this compromise, which is good public policy but also something Democrats and Republicans, not all, can support—and I know we will get the support of the House and the President. I want to say a special thank you for your leadership. I have learned a lot in the last 4 years watching you and listening to you. Certainly in this instance it is no exception, but thank you.

I want to say to Senator FEINGOLD, we had a number of amendments that have been presented to us today, all thoughtful amendments by some of our

very finest Members. I was not able to support any of them.

The one amendment that I have literally worked, as he knows, behind the scenes to try to get included in a managers' amendment is this amendment or some variation of this amendment. I think the underlying point you make—if a class action is filed in a State court and that is turned down and there is an effort to move it to Federal court, that is turned down, and then there is another effort to move that class action from State court to Federal court, we limit the second time through. There has to be a response in 60 days to the appeal by the Federal judge on the appeal. That would sort of beg the question, Should not there maybe be some kind of time limit as well on the first time there is an attempt to remove the case to the Federal court? That strikes me as something that makes common sense and seems fair and reasonable. As he knows, I have reached out as recently as last night with some of the people involved in the Judicial Conference and the Rules Committee to see if there is a way to strike the balance, and I believe you have moved toward that balance.

My hope is that we could take this amendment or something similar to this amendment and include it in a managers' package. You have heard Senator DODD and me and others say there is a very delicate compromise here, and there is a concern if we change one piece of the bill we invite friends on the other side, who have a different view about the balance and would like to take the bill in a different direction—we unleash them to feel free to come forth with their amendments and set the bill back.

Having said that, I still think this amendment as you have redrawn it would actually be a good addition to a managers' amendment. I learned today there is not going to be a managers' amendment. As a result, I am not going to be able to support this amendment.

I discussed this this morning with Senator SPECTER; he finds favor with your amendment. I think he mentioned that at the Senate Judiciary Committee hearing. He said to me—and he has no reason to say this, but I think it is just in his heart—he thinks you are onto something here and would like to take the Senator's approach on this provision and include it in another bill that he is working on and presumably will have hearings on.

I think this idea, if it does not pass tomorrow and does not get included in the underlying bill, is going to live for another day and we will be back to where we can hopefully all support it.

I thank the Senator for a real thoughtful approach and for his willingness to compromise and try to find some middle ground. I think he has found it. I think his efforts will ultimately be rewarded.

Mr. FEINGOLD. Mr. President, I thank the Senator from Delaware for his kind remarks and for his genuine efforts to try to reach an accord. It is a shame when we have the chairman of the committee admitting that this ought to be dealt with, and one of the great advocates of this legislation admitting that this is just a question of fixing something, we can't get it done. There is something wrong with the way we are proceeding when we can't fix something that basically nobody is really against if we do it right.

I recognize what is likely to happen in the vote. But I take the Senator at his word that he is hoping we can resolve it. Perhaps this is something that can still happen on this bill. If not, we have to resolve it another way. But I thank him for his sincere efforts to solve this problem.

I yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. FRIST. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS

Mr. FRIST. Mr. President, I ask unanimous consent that there now be a period for morning business with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

MODERATE ISLAM MOVEMENTS

Mr. BOND. Mr. President, 2 weeks ago when I talked about relief for the victims of the tsunami in Indonesia and what we are doing there, I said there was much more I wanted to call to the attention of my colleagues and the people of the United States. One area that is extremely important is the enormous effort that is underway in Indonesia's mainstream, moderate Muslim population to promote a moderate, pluralistic, democratic Islam, both in Indonesia and throughout the region.

Unlike the Middle East, in Indonesia and Southeast Asia, Islam and Muslim organizations have been at the forefront of the country's struggle for a democratic society.

And Muslim groups and leaders in Indonesia have been among the world's pioneers in driving inter-faith dialogues.

During my recent visit to Indonesia, I met Yenny Zannuba Wahid, one of the latest leaders in this movement. Yenny is the daughter of His Excellency Abdurraham Wahid; a Muslim cleric, a leader in promoting religious tolerance in Indonesia and one of Indonesia's first democratically elected presidents.

Yenny has founded the Wahid Institute, an organization dedicated ''to bringing justice and peace to the world by espousing a moderate and tolerant view of Islam and working for the welfare of all.''

As Yenny noted in a recent speech, Islamist parties gained a sizable vote in the 1999 and 2004 Indonesian elections; these developments present the question of what role Islamic forces will play in setting the direction of social and political evolution in today's Indonesia. Will Indonesia, a democracy with Muslim population of over 200 million, remain on the path of a moderate, pluralistic democracy or will a small but increasingly influential minority of fundamentalistic Islamists steadily gain ground with the masses?

Through the creation of the Wahid Institute, Yenny has chosen not to allow these currents to flow without resistence. To be precise, the goal of the WI is to expand on the intellectual principles of Gus Dur to development of moderate Islamic thought that will promote democratic reform, religious pluralism, multiculturalism and tolerance amongst Muslims both in Indonesia and around the world. The institute has set out to create a dialogue between the highest spiritual and political leaders in the West and Muslim world.

The Wahid Institute has embarked on an impressive agenda of programs, including an effort to facilitate communication between Muslim and non-Muslim scholars on Islam and Muslim society and on the subjects of Christianity, Judaism, Hinduism and Buddhism; through conferences, discussions, publications and its website—wahidinstitute.org.

The Wahid Institute has plans to build a Muslim library, to serve scholars, researchers, activists, built on the library and life work of President Wahid. It is also planning to link Muslim NGOs and committed individuals to build a network of individuals and groups dedicated to promoting these ideals.

Just an importantly, the Wahid Institute will focus on the education of young people, supporting opportunities for promising young men and women in Indonesia to focus on progressive and tolerant Muslim thinking.

But the Wahid Institute is the latest of the groups committed to promoting moderate Islam. The Liberal Islam Network and International Center for Islam and Pluralism have been hard at work at promoting a peaceful and progressive Islam for sometime. I encourage all to become familiar with these groups.

In neighboring Malaysia, a country with a majority Muslim population of 18 million Muslims, recently elected Prime Minister, Abdullah Badawi, has emerged as a strong voice in promoting ethnic and religious tolerance and equality for women.

His own country struggled through times of violent race riots and has made ethnic and religious tolerance an

objective. Malaysia has been an economic success story and U.S. businesses consider it a great place to invest and do business. But the growing strains of fundamentalist Islam have emerged as a challenge. The new Prime Minister has confronted them.

As noted in an excellent opinion piece in the Asian Wall Street Journal written by Diana Lady Dougan, ''with senior positions held by women in his government and a strong personal commitment to religious and ethnic tolerance, . . . Prime Minister Abdullah walks the talk. If he can combine his strong and vocal advocacy of Islam Hadhari with continued progress in Malaysia's economic development based on a rule-of-law government and market-based economies, he is well positioned to become an inspiration far beyond the borders of Malaysia''.

I ask unanimous consent that a copy of Ambassador Dougan's op-ed be printed in the RECORD at the end of my speech.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit I).

Mr. BOND. Mr. President, in fact, the Prime Minister speaks eloquently about Hadhari Islam, meaning ''civilisation Islam,'' meaning religion should be directed toward good, toward progress and toward development—all consistent with the Tenets of Islam.

The Prime Minister recently took this message in a powerful address before the World Council of Churches.

I will quote a couple of topics in his speech.

He said:

Islam Hadhari is an approach that emphasises development, consistent with the tenets of Islam, and focuses on enhancing the quality of life. It aims to achieve this via the mastery of knowledge; the development of the individual and the nation; the implementation of a dynamic economic, trading and financial system; and the pursuit of integrated and balanced development to develop pious and capable people, with care for the environment and protection of the weak and disadvantaged.

Further, he said:

Malaysia's experience and our promotion of Islam Hadhari also clearly demonstrate a progressive attitude towards relations with non-Muslim minorities and between gender. Our approach does not threaten the rights of non-Muslims. In fact, we celebrate the diversity of our respective cultures and heritage. Those of other faiths in Malaysia, although a minority, have never been persecuted and there is no tolerance in my administration for discrimination and prejudice against any religious group. I am a Muslim, but I am also a leader of all Malaysians—whatever their faith.

Similarly, we have tried to ensure that the rights of women are protected and that they fulfil their potential without having to face artificial barriers constructed in the name of Islam. We know Islam to be just and fair, and that it honours the position and rights of women. But there are clear instances of prejudices being cloaked in religious teachings in the Muslim world, aimed at passing off gender discrimination as the accepted norm. This will simply not do.

Finally, Singapore, which lies between two great nations with majority Muslim populations, should be commended for the valuable role is has assumed in promoting a continental dialogue over these critical issues.

Singapore Senior Minister, Goh Chok Tong, is leading the way to the creation of the Asia-Middle East Dialogue. Bourne out of an extensive trip to the Middle East, where he observed in many Middle East countries a mainstream society both diverse and inclusive, the first Asia-Middle East Dialogue, AMED, will be held June 2005 in Singapore.

An event of great ambition, AMED will bring together officials, academics, religious leaders and opinion makers for some 50 countries in the Middle East and Asia. As was noted to me, this is not a government-to-government meeting, this is a meeting best described as people to people.

Among many the goals: forging closer political, economic, and security ties; a critical one is to improve the socio-cultural relations between the peoples of the two regions. The platform will provide a framework for the two regions to engage, to highlight to reformist elements and give a voice to the changes taking place in the Middle East.

The growth in economic engagement and the inter-regional linkages will hopefully yield economic opportunities to push further the reform and liberalization of the economies of the Middle East.

I think there is value in that approach.

Above all, AMED will provide a platform for moderate Muslim countries to speak up and challenge the extremist strain of Islam. The threat presented by global terrorism stems from a militant, extremist ideology that uses religion to foment divisions between and within societies, to foster terrorist acts and murders of innocent civilians, government officials, and other leaders. The forum, among others, will elevate elements to counter this movement.

In an encouraging sign, the Egyptian Government has offered to host the next AMED. I commend the Senior Minister. I commend Prime Minister Abdullah. I commend Yenny Zannuba Wahid, as well as the people of Singapore, for this important effort, which will have, I think, long-range benefits not only for the people of Islam and the people of Islamic countries, but all of us who are concerned about the rise of religious fanaticism misusing the peaceful religion of Islam.

I thank the Chair and my colleagues.

I yield the floor.

EXHIBIT 1

[From the Asian Wall Street Journal, Nov. 19, 2004]

MALAYSIA'S SHADOW IS LIFTING

(By Diana Lady Dougan)

This week's very public reunion between Malaysia's new Prime Minister Abdullah Badawi and former Deputy Prime Minister Anwar Ibrahim may be cause for cautious celebration. It is now six years since then Prime Minister Mahathir Mohamad sacked Mr. Anwar at the height of the Asian financial crisis, replacing him with Mr. Abdullah. Six years in which the headlines generated by the controversial legal process surrounding Mr. Anwar's conviction for corruption and sodomy have cast a shadow over Malaysia's reputation as a rising star among industrializing nations.

Now that shadow is starting to lift. The first step came in September, when Malaysia's Federal Court overturned Mr. Anwar's sodomy conviction, a step viewed by many as a signal that Malaysia is back on the all-too-short list of ''rule of law'' countries in the Islamic world. This week saw another highly symbolic step. Mr. Anwar joined the head table of a high-profile banquet hosted by Mr. Abdullah to celebrate the end of Ramadan, the first meeting between the two men since his jailing six years ago.

This signaled Mr. Abdullah's emergence from Mr. Mahathir's shadow. Mr. Abdullah is secure in his position as prime minister of one of the largest secular Islamic countries. A leader of particular importance to the West because of his unequivocal denouncement of terrorism and the hate mongering of Islamic fundamentalists.

Despite many years in Mr. Mahathir's cabinet, including five as deputy prime minister, Mr. Abdullah was a largely unknown quantity when he quietly stepped into the departing prime minister's shoes last year. When he assumed the role in Oct. 2003, Mr. Abdullah did not wait long to lay the groundwork for governmental reforms. Initially, his efforts to tackle corruption, liberalize Malaysia's capital market and increase business transparency were dismissed in some quarters as predictable political posturing. But in the year since Mr. Abdullah became prime minister, even Moodys and Standard & Poor's have acknowledged Malaysia's efforts to improve its economic fundamentals. Malaysia has jumped to 15th place this year from 23rd place in 2003 in the ranking of attractive places for foreign direct investment among the 65 countries listed in the FDI Conference Index, according to a recent report from management consultants A.T. Kearney.

Malaysia and its new prime minister have a lot going for them. The Malaysian Central Bank reports a 7.6% growth rate during the first half of this year, following growth of 5.2% in 2003. Its foreign reserves leapt to a record high of 221.1 billion ringgits ($58.2 billion) in October.

Malaysla also has oil reserves. But unlike many oil producing countries in the Muslin world, Malaysia has a large and stable middle class. An enviable 82% of its population live above the poverty line.

Nonethless Malaysia is often stigmatized as a Muslin society where Islam is constitutionally enshrined as the national religion. Although led by pragmatic and progressive leaders today, the country has historically had its share of radical Muslim activists. Indeed few Westerners recall that Mr. Anwar got his political start as a Muslim firebrand activist. And during his six years in jail, the former deputy prime minister has deftly orchestrated the creation of a new splinter party headed by Wan Azizah Wan Ismail, his conservatively shrouded ophthalmologist wife and mother of six. However since his September release, little had been seen of Mr. Anwar until this week. And it remains to be seen how much of the support for his political party will survive now that Mr. Anwar is no longer a folk hero in prison.

Although not as colorful as Messrs. Mahathir or Anwar, Mr. Abdullah has long enjoyed a personal reputation untainted by scandal. He is a devout Muslim with a university degree in Islamic studies reinforced by a father who taught the Koran and a

grandfather who ran a madrassa religious school.

Ironically Mr. Abdullah's reputation as a respected scholar of the Koran has worked to Mr. Anwar's advantage in the past, and the two men have ties that go back far beyond this week's reunion. In 1980, when Mr. Anwar eloped to Thailand with his now wife, his father-in-law dramatically refused to acknowledge the marriage and disowned his daughter. The young couple recruited Mr. Abdullah as intermediary who was credited with using quotes from the Koran to successfully intercede on Mr. Anwar's behalf and convince his fundamentalist father-in-law to accept the marriage.

Armed with ethnically Arab heritage as well as Arabic language fluency (the name ''Badawi'' means ''Bedouin'' in Arabic), Abdullah Badawi comes with a credibility in the terror-plagued Middle East that Asian Muslims seldom have. And as a well-respected expert on the Koran, he cannot easily be yanked around nor intimidated by fundamentalist zealots who are distorting the Islamic faith and the world view.

Mr. Abdullah is starting to gain attention in the Arab world for his vocal and eloquent championing of ''Islam Hadhari.'' Roughly translated as ''Civilizational Islam,'' Islam Hadhari is not a new religion. Rather it is a rallying point for progressive Muslims in Malaysia. Islam Hadhari is committed to promoting ethnic and religious tolerance, equality for women, protecting the religious as well as political rights of minorities, and pursuing economic development based on education and fairness.

With many senior positions held by women in his government and a strong personal commitment to religious and ethnic tolerance embedded in his Chinese, Arab and Malay heritage, Prime Minister Abdullah walks the talk. If he can combine his strong and vocal advocacy of Islam Hadhari with continued progress in Malaysia's economic development based on rule-of-law government and market-based economics, he is well positioned to become an inspiration far beyond the borders of Malaysia.

As chair of both the 118 country Non Aligned Movement and the 57 country Organization of the Islamic Conference until 2006, Malaysia under Mr. Abdullah's leadership can command an international spotlight—especially in the Muslim world.

Clearly no single person can singlehandedly defeat the distorted logic and deadly forces being unleashed in the name of Allah around the world, much less the debilitating economics that plague much of the Muslim world. But Mr. Abdullah is clearly working to turn the tide in the most important battle we are facing. For all our sakes, let's hope both Malaysia and its new prime minister take advantage of their unique opportunities.

TRIBUTE TO REPRESENTATIVE STEVEN J. RUDY

Mr. MCCONNELL. Mr. President, I rise today to commend a fellow Kentuckian who, like all of us, has asked his neighbors for the honor of representing them in government. Representative Steven J. Rudy speaks for the residents of Ballard, Carlisle, Hickman, Fulton, and McCracken Counties in the Kentucky General Assembly. Amazingly, he won this honor last November at age 26, in his first bid for public office.

Representative Rudy has had a passion for politics and government his entire life. As a high school student, he once declared to his American government teacher that he would hold elective office by age 30. He has always been eager to share his ideas about issues, and to listen to others. After graduating college he worked as a high school teacher, and then at his family's store, Rudy's Farm Center, where he still works when not in Frankfort. In this way he keeps in touch with his constituents.

Representative Rudy has accomplished much in a short time, and I have no doubt he will continue to excel. I look forward to seeing this bright young Kentuckian mature on the political stage. As so many of our best and brightest, he has the potential to transform our Commonwealth into a worldwide leader in technology, medicine, industry, and the cultural arts. I wish him continued success as he follows in the tradition of public service carved out by distinguished Kentuckians such as Alben Barkley and Henry Clay.

Mr. President, I ask unanimous consent to print in the RECORD an article from The Paducah Sun, ''Politician long in the making,'' about Representative Rudy's accomplishments and respect for public service.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Paducah Sun, Jan. 9, 2005]

POLITICIAN LONG IN THE MAKING

(By Matt Sanders)

KEVIL, KY—By his senior year at Ballard Memorial High School, Steven Rudy had developed such a keen interest in government that he once proclaimed during a county fiscal court meeting that he would be elected judge-executive before turning 30.

Rudy may never get a chance to run the county government because he was elected to the Kentucky House of Representatives on Nov. 2 at age 26. It was his first try for public office.

''Politics has been a lifelong career ambition. There was really no clear goal growing up,'' said Rudy, who was sworn in Jan. 4 and will begin his freshman term in the General Assembly on Feb. 1.

But Rudy doesn't dwell on his upset in the general election or being one of the youngest lawmakers in Frankfort. Since his victory, he has focused on becoming a good public servant and studying the lawmaking process.

''I've always liked being involved in open discussions—being able to toss around ideas and make decisions that can help people. At times, I haven't minded playing the devil's advocate.''

In the mid-1990s, Julian ''Whitey'' Elliott was Rudy's American government teacher as well as a county magistrate. Elliott had a front-row seat at the meeting when the teenager made his bold prediction. Elliott recalled that he fully expected his student to make good on his promise and was not surprised on Nov. 2 by the Republican Rudy's 1,642-vote upset of 17-year incumbent Charles Geveden in the 1st District.

''I think Steven has always wanted to make things better,'' Elliott said. ''Early on, even at the local level, he was able to see that people could serve and make things better. He never forgot that. Steven saw his chance in this campaign to make things better.''

As a magistrate, Elliott frequently incorporated county business into his classroom lectures, which sparked lively roundtable discussions. He said Rudy never held back his political views.

''I kept the students apprised as what was going on in the county, and I thought it was interesting that Steven was always willing to speak his mind,'' Elliott said. ''I liked for the kids to express opinions, but also to respect the opinions of others who did not agree with you. I tried to get them to look at issues from the other perspective.

''I remember Steven leaning toward a Republican stance, and this was when not every Republican was stating his views publicly. There were maybe only 300 Republicans in the county at that time.''

The county now has 712 registered Republicans, compared to 5,154 registered Democrats, according to the Ballard County Clerk's Office.

Rudy smiled widely and noted that he was the first registered Republican in his family.

''My philosophy was always in line with the national (Republican) platform,'' Rudy said.

In fact, it was through Rudy's persistence that the fiscal court conducted a meeting in the high school cafeteria so the students could see government in action.

The fiscal court met twice monthly, in the early afternoon and at the same time as the American government class. A substitute teacher took over Elliott's class on fiscal court days, but Rudy always pleaded with his teacher to allow the students to attend a meeting. Instead, Elliott brought the meeting to the students.

''It was really interesting to watch the magistrates make decisions on what was right for Ballard County,'' Rudy said.

His interest in government and debate also was nurtured at Ballard Memorial in the Future Farmers of America chapter, which taught parliamentary procedure.

IN THE BEGINNING

Rudy's political ambition was born at the side of his grandfather, the late Bill Rudy, who founded the Ballard County agriculture store that would be the forerunner to the family farm supply business, Rudy's Farm Center.

Nearly every year, Bill Rudy took his grandson to the Fancy Farm Picnic, Kentucky's most important grassroots political event. The often fiery political rhetoric fascinated both elder and younger Rudy, with their only difference being that Bill Rudy was a lifelong Democrat.

''I remember my grandfather talking about the days when the Democrats bashed the Republicans during the speaking,'' Rudy said. ''I didn't like that, but I started going to the picnics at the time (U.S. Senator) Mitch McConnell came along and he said the things that made me proud.''

Bill Rudy also was involved in State politics—he served as manager of the State Department of Agriculture's western Kentucky office in Paducah. He also was a history buff and an avid reader, which gave him a wealth of knowledge about American presidents. He could talk for hours about the presidents and did so at family gatherings.

But had Bill Rudy lived longer, he probably would have joined his grandson in the Grand Old Party.

''Dad was really down on Democrats there at the end,'' said Jack Rudy, Steven's father. ''It may have been what was going on with (President) Bill Clinton, but he told me that he had decided on making a change.''

But time did not allow Bill Rudy to change parties. He died of a heart attack shortly after that conversation with his son. Bill Rudy's death came in 2000, and ironically on

the first Saturday in August—the day of the Fancy Farm Picnic.

ONCE A REPUBLICAN . . .

It seems natural that Rudy recalled one of his earliest memories was, as a 3-year-old, watching televised replays of the 1981 assassination attempt of Republican President Reagan.

The day he registered to vote was also the day he got into an argument with a deputy county clerk who urged Rudy to register as a Democrat. Republicans, Rudy said he was told, rarely were able to vote in primary elections because it was rare for Republicans to run for elected office in Ballard County.

''I couldn't understand that,'' Rudy said. ''Why would anyone care how you're registered? Voting is what is important.''

While in college, Rudy wore his Republican feistiness on his chest during the 1996 presidential campaign. He often wore a Robert Dole-Jack Kemp T-shirt to classes at the then-Paducah Community College, much to the displeasure of his classmates. The Dole-Kemp ticket lost when Democrat Clinton won a second term.

Rudy's Spartan office at the farm store could resemble the GOP archives. Atop his filing cabinet is a bottle of red-white-and-blue labeled ''W'' ketchup, a souvenir from the 2004 presidential race that poked fun at Democrat presidential nominee John Kerry's wife, Teresa Heinz Kerry, and stepchildren, who are heirs to the Heinz ketchup fortune. The bottle stands next to a hardbound copy of ''The Faith of George Bush.'' Not far away is a photo of Rudy with the State's three most powerful Republicans, Senators McConnell and Jim Bunning and Governor Ernie Fletcher.

In fact, business photos and a St. Louis Cardinals' 2005 baseball schedule stand among the few nonpartisan mementos.

But Rudy said his thinking does not always follow partisan lines. He mentioned two Democrats—former State agriculture commissioner Billy Ray Smith and 2nd District Rep. Frank Rasche of Paducah—whom he admired.

''The Republicans aren't perfect and I don't support everything within the party,'' Rudy said. ''Billy Ray is a real down-to-earth guy who would do what was right for all Kentucky farmers. Frank is someone I feel I can rely on (in the General Assembly). As chairman of education, he does what is right for the children of Kentucky.''

HOUSE HUNTING

The new year will continue to be busy. In addition to beginning his freshman term in the General Assembly in February, Rudy and his fianceé, Jessica Patton, are planning a May wedding. Rudy grinned and said he called Fletcher for assurance that there would be no special session, which is usually convened in May.

Searching for a home also presented a challenge. By law, Rudy must reside within his district, which consists of Ballard, Hickman, Carlisle and Fulton counties, and nine western McCracken County precincts. Patton is a receptionist with the U.S. Army Corps of Engineers at Barkley Dam, and the soon-to-be newlyweds decided to live in McCracken County, which would be between their work places. That limits their search to the precincts of Ragland, Woodville, Grahamville, Lamont, Maxon, Lang, Lone Oak 3, Massac-Milan and Melber.

Rudy pointed to a large map of the nine precincts, covering nearly one wall in his office. ''Every time she calls and tells me she found a house, I ask for the location and check it on the map to see if it's an option,'' Rudy said.

RELUCTANT CANDIDATE

Despite his early boasting of political ambitions, there was not much planning by Rudy prior to announcing his candidacy. As a small businessman, Rudy said, ''I have seen things that make Kentucky an unfriendly business state, like the tax structure.'' He also said he heard much frustration in the community over the inability of lawmakers to pass a budget.

Rudy had been active within the party during several campaigns, including Fletcher's gubernatorial bid, and he received what he called an unlikely phone call from state party leaders wanting him to challenge for the 1st District seat. ''If you would have asked me 18 months ago, it would have seemed unlikely that I would run. I was very reluctant. I thought I was too young to be taken seriously,'' Rudy said. ''But then I figured it was a win-win situation, so I gave it a shot. If I won the election, great. If I didn't win, the campaign would have given me plenty of name recognition and I would have met a great deal of people, which would benefit my next campaign.''

THE FAMILY BUSINESS

Inside Rudy's Farm Center, customers are treated like family. They are greeted with a smile and a handshake. Conversations easily flow over a variety of topics—planting and harvest, weather, church, community events and, of course, politics.

Retired Barlow farmer Bobby Myers was a frequent customer and the day was never too busy to pass up discussing current events with Rudy.

''We always talked about what was happening, around here and in Frankfort. He always seemed to know what was going on,'' Myers said.

Although Myers admitted he never thought then of Rudy as a future politician, he's confident the freshman lawmaker will prosper in his new position.

''I knew his daddy and his granddaddy and Steven is just like them, good and honest and fair,'' Myers said. ''Those are the kind of people we need in Frankfort.''

The store—which offers farm, home, hardware and industrial merchandise—is a family business started in 1986 by his parents, Jack and Jeanette Rudy. His brother, Matt, also works at the store. Another brother, Jeff, is a seminary student.

Steven Rudy handles the center's industrial sales, which keeps him on his cell phone and behind a computer for much of his work day.

Rudy took his agriculture education degree from Murray State University in 2000 and became an agriculture instructor at Lyon County High School in Eddyville. He used parliamentary procedure to start the same kind of classroom debates that he loved as one of Elliott's students.

But his father had always told Rudy there was an opening for him in the family business. After much prayer and realizing he could jump-start the store's industrial sales, Rudy left the classroom, came home and never looked back.

The store lies on the border in both McCracken and Ballard counties. The front acreage is lined with large merchandise, but there also is room for a soccer field, complete with two goals, which the Rudys set up for a local youth league.

Transactions at the farm store typically are finalized with a bag of freshly popped popcorn, Jack Rudy's favorite snack. A theater-style popper stands behind the counter, and the Rudys hand out 50 pounds of the snack every two to three weeks.

''Everyone tells me that I eat more than half of it, but it's a way of saying thanks,'' Jack Rudy said.

GOING TO WORK

Since his election, Rudy splits his time by attending sessions in Frankfort for freshmen legislators, working at the farm store and helping plan the wedding.

The General Assembly will convene Feb. 1 for 25 working days to consider and act upon legislation.

''I'm proud of him and I hope he does well,'' Elliott said. ''The state needs people in Frankfort who care about people.''

HONORING OUR ARMED FORCES

CORPORAL TIMOTHY GIBSON, USMC

Mr. GREGG. Mr. President, I rise today to remember and honor Cpl Timothy Gibson of Hillsborough, New Hampshire for his service and supreme sacrifice for his country.

Corporal Gibson demonstrated a willingness and dedication to serve and defend his country by joining the United States Marine Corps. Just as many of America's heroes have taken up arms in the face of dire threats, Tim dedicated himself to the defense of our ideals, values, freedoms, and way of life. His valor and service cost him his life, but his sacrifice will have spared millions from lives of tyranny and sorrow.

Tim graduated from Merrimack High School in Merrimack, NH in 2000 and enlisted in the Marine Corps on April 9, 2001. He then reported to Marine Corps recruit training and subsequently received further training as a rifleman in the infantry. Upon completion of this training, he became a member of 1st Battalion, 3rd Marine Regiment, 3rd Marine Division, III Marine Expeditionary Force, Marine Corps Base Hawaii. From this unit's home base in Hawaii, he would later deploy to Iraq in pursuit of those who would threaten our way of life.

Tragically, on Januaury 26, 2005, Cpl Gibson gave his last full measure for our Nation when the CH–53E helicopter he was in crashed near Ar Rutbah, Iraq. Throughout his short career, Tim earned a series of accolades which testify to the dedication and devotion he held for the Marine Corps, his fellow Marines, and his country. Tim's hard work and dedication contributed greatly to his unit's successes and placed him among many of the great heroes and citizens that have given the ultimate sacrifice for their country. Tim was recognized for his service by the Combat Action Ribbon, the Marine Corps Good Conduct Medal, the Global War on Terrorism Service Medal, the Sea Service Deployment Ribbon, Second Award, and the National Defense Service Medal. He was also the recipient of a Certificate of Appreciation, a Letter of Appreciation, and Meritorious Mast for his performance above and beyond expectations while in the Marine Corps.

My condolences and prayers go out to Tim's family, and I offer them my deepest sympathies and most heartfelt thanks for the service, sacrifice, and example of their Marine, Cpl Timothy Gibson. Tim exemplified the words of Daniel Webster who said, ''God grants liberty only to those who love it, and are always ready to guard and defend

it.'' Because of his efforts, the liberty of this country is made more secure.

SHIRLEY CHISHOLM TRIBUTE

Mr. SARBANES. Mr. President, today I pay tribute to a devoted public servant and a former Member of the U.S. Congress, Shirley Chisholm. As a passionate activist, the first African-American woman to be elected to Congress, as well as the first African-American to seek the Presidential nomination from a major political party, Congresswoman Chisholm was a person of exceptional courage and profound impact. She will be missed.

Before her election to the New York State Legislature in 1964, she was a dedicated educator in New York City, serving as a teacher as well as a daycare director. Elected to national office in 1969, Congresswoman Chisholm worked for both gender and racial equality. She was cofounder of New York NOW, the first chapter of the National Organization for Women. In 1969, she became a founding member of the Congressional Black Caucus, and in 1971 she cofounded the National Women's Political Caucus.

She continued her fight for minority representation when she sought the Democratic nomination for President of the United States in 1972. Although many criticized her campaign as a futile effort, she tenaciously continued her fight for the nomination and laid the groundwork for future minorities to run for the Presidency. In her own words, she ''ran for the Presidency, despite hopeless odds, to demonstrate sheer will and refusal to accept the status quo.'' And indeed she was instrumental in opening the door for women and minorities to enter Presidential races in the future. As she noted in her autobiography, ''The Good Fight,'' ''the next time a woman runs or a black, a Jew or anyone from a group that the country is 'not ready' to elect to its highest office, I believe he or she will be taken seriously from the start. The door is not open yet, but it is ajar.''

Throughout her lifetime, Shirley Chisholm worked to open doors for women and minorities inside and outside of the political arena, and in the process gained the respect and acknowledgement of even her most ardent political foes. By remaining loyal to her own beliefs and steadfastly working to accomplish her goals, Shirley Chisholm truly was what the title of her autobiography declared: ''unbought and unbossed.''

Her vision, her ideals, and her courage are certainly not to be forgotten. I extend my deepest sympathies to her family and friends.

RULES OF PROCEDURE—COMMITTEE ON RULES AND ADMINISTRATION

Mr. LOTT. Mr. President, today the Committee on Rules and Administration approved the following rules for the committee. I ask unanimous consent that they be printed in today's RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

RULES OF PROCEDURE OF THE SENATE COMMITTEE ON RULES AND ADMINISTRATION

(Adopted Feb. 8, 2004)

TITLE I—MEETINGS OF THE COMMITTEE

1. The regular meeting dates of the committee shall be the second and fourth Wednesdays of each month, at 9:30 a.m., in room SR–301, Russell Senate Office Building. Additional meetings may be called by the chairman as he may deem necessary or pursuant to the provisions of paragraph 3 of rule XXVI of the Standing Rules of the Senate.

2. Meetings of the committee, including meetings to conduct hearings, shall be open to the public, except that a meeting or series of meetings by the committee on the same subject for a period of no more than 14 calendar days may be closed to the public on a motion made and seconded to go into closed session to discuss only whether the matters enumerated in subparagraphs (A) through (F) would require the meeting to be closed followed immediately by a recorded vote in open session by a majority of the members of the committee when it is determined that the matters to be discussed or the testimony to be taken at such meeting or meetings—

(A) will disclose matters necessary to be kept secret in the interests of national defense or the confidential conduct of the foreign relations of the United States;

(B) will relate solely to matters of the committee staff personnel or internal staff management or procedure;

(C) will tend to charge an individual with crime or misconduct, to disgrace or injure the professional standing of an individual, or otherwise to expose an individual to public contempt or obloquy, or will represent a clearly unwarranted invasion of the privacy of an individual;

(D) will disclose the identity of any informer or law enforcement agent or will disclose any information relating to the investigation or prosecution of a criminal offense that is required to be kept secret in the interests of effective law enforcement;

(E) will disclose information relating to the trade secrets or financial or commercial information pertaining specifically to a given person if—

(1) an Act of Congress requires the information to be kept confidential by Government officers and employees; or

(2) the information has been obtained by the Government on a confidential basis, other than through an application by such person for a specific Government financial or other benefit, and is required to be kept secret in order to prevent undue injury to the competitive position of such person; or

(F) may divulge matters required to be kept confidential under the provisions of law or Government regulations. (Paragraph 5(b) of rule XXVI of the Standing Rules.)

3. Written notices of committee meetings will normally be sent by the committee's staff director to all members of the committee at least a week in advance. In addition, the committee staff will telephone or e-mail reminders of committee meetings to all members of the committee or to the appropriate staff assistants in their offices.

4. A copy of the committee's intended agenda enumerating separate items of legislative business and committee business will normally be sent to all members of the committee by the staff director at least 1 day in advance of all meetings. This does not preclude any member of the committee from raising appropriate non-agenda topics.

5. Any witness who is to appear before the committee in any hearing shall file with the clerk of the committee at least 3 business days before the date of his or her appearance, a written statement of his or her proposed testimony and an executive summary thereof, in such form as the chairman may direct, unless the Chairman and the Ranking Minority Member waive such requirement for good cause.

TITLE II—QUORUMS

1. Pursuant to paragraph 7(a)(1) of rule XXVI of the Standing Rules, a majority of the members of the committee shall constitute a quorum for the reporting of legislative measures.

2. Pursuant to paragraph 7(a)(1) of rule XXVI of the Standing Rules, one-third of the members of the committee shall constitute a quorum for the transaction of business, including action on amendments to measures prior to voting to report the measure to the Senate.

3. Pursuant to paragraph 7(a)(2) of rule XXVI of the Standing Rules, 2 members of the committee shall constitute a quorum for the purpose of taking testimony under oath and 1 member of the committee shall constitute a quorum for the purpose of taking testimony not under oath; provided, however, that in either instance, once a quorum is established, anyone member can continue to take such testimony.

4. Under no circumstances may proxies be considered for the establishment of a quorum.

TITLE III—VOTING

1. Voting in the committee on any issue will normally be by voice vote.

2. If a third of the members present so demand, a record vote will be taken on any question by roll call.

3. The results of roll call votes taken in any meeting upon any measure, or any amendment thereto, shall be stated in the committee report on that measure unless previously announced by the committee, and such report or announcement shall include a tabulation of the votes cast in favor of and the votes cast in opposition to each such measure and amendment by each member of the committee. (Paragraph 7 (b) and (c) of rule XXVI of the Standing Rules.)

4. Proxy voting shall be allowed on all measures and matters before the committee. However, the vote of the committee to report a measure or matter shall require the concurrence of a majority of the members of the committee who are physically present at the time of the vote. Proxies will be allowed in such cases solely for the purpose of recording a member's position on the question and then only in those instances when the absentee committee member has been informed of the question and has affirmatively requested that he be recorded. (Paragraph 7(a)(3) of rule XXVI of the Standing Rules.)

TITLE IV—DELEGATION OF AUTHORITY TO COMMITTEE CHAIRMAN

1. The Chairman is authorized to sign himself or by delegation all necessary vouchers and routine papers for which the committee's approval is required and to decide in the committee's behalf all routine business.

2. The Chairman is authorized to engage commercial reporters for the preparation of transcripts of committee meetings and hearings.

3. The Chairman is authorized to issue, in behalf of the committee, regulations normally promulgated by the committee at the beginning of each session.

TITLE V—DELEGATION OF AUTHORITY TO COMMITTEE CHAIRMAN AND RANKING MINORITY MEMBER

The Chairman and Ranking Minority Member, acting jointly, are authorized to approve on behalf of the committee any rule or regulation for which the committee's approval is required, provided advance notice of their intention to do so is given to members of the committee.

THE NATIONAL GUARD

Mr. CRAPO. Mr. President, I rise today to honor the National Guard, to mark its 368th birthday on December 13.

The National Guard was founded in 1636 and has answered the call to protect this great Nation in the face of every conflict. It was formed even before the birth of America and continues to serve as a safeguard against all enemies and oppressors.

The Guard is now a force of more than 450,000 men and women strong, proudly bearing the seal of American dreams. More than 95,000 of those are serving overseas in Iraq, Afghanistan and Bosnia, protecting America on foreign soil. As some of the Nation's finest, they do not only protect us abroad but do the same here at home, dependably defending us against foreign threats and terrorists.

However, protecting the American people is only part of the heroic contributions the Guard provides us. Those brave souls also serve as rescuers, reaching out to those who are victims of natural disaster, and supporting our people in neighborhoods and communities in times of desperation and need. From coast to coast and around the world, all humanity can count on these valiant Americans.

Each of us owes a great debt of gratitude to every member of the National Guard, from the past and the present, for their sacrifice and dedication to protecting America's cherished freedoms and democracy. It is wonderful that we can honor the National Guard on its birthday and remember its significance to the people.

LOCAL LAW ENFORCEMENT ENHANCEMENT ACT OF 2005

Mr. SMITH. Mr. President, I rise today to speak about the need for hate crimes legislation. Each Congress, Senator KENNEDY and I introduce hate crimes legislation that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society. Likewise, each Congress I have come to the floor to highlight a separate hate crime that has occurred in our country.

Late last summer, a man was beaten, robbed, and sexually assaulted by a group of three men and one teenager. The alleged motivation behind the assault was the sexual orientation of the victim. The group of assailants met the victim at a gay bar, and he was allegedly targeted because he was gay.

I believe that the government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act is a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

AGRICULTURAL PRODUCTS EXPORT FACILITATION ACT OF 2005

Mr. LUGAR. Mr. President, I rise today in support of a bill that will facilitate the sale of U.S. agricultural products abroad. I am delighted to join colleagues from both sides of the aisle in cosponsoring this bill, which will help remove potential impediments to the shipment of U.S. agricultural goods to Cuba.

Cuba's geographic proximity to the U.S makes it an important market for U.S. exporters. This bill will maintain significant economic benefits not only for the farmers in my home State of Indiana, but for farmers throughout the country. Agricultural trade with Cuba is currently allowed under the Trade Sanctions Reform and Export Enhancement Act of 2000, TSREEA. This legislation was enacted in the 106th Congress to provide additional markets for U.S. agricultural products and support the American farmer. I have long been an advocate of exercising care when imposing unilateral economic sanctions. Numerous studies have shown that unilateral sanctions rarely succeed and often harm the United States more than the target country. Sanctions can jeopardize billions of dollars in U.S. export earnings and hundreds of thousands of American jobs. They frequently weaken our international competitiveness by yielding to other countries those markets and opportunities that we abandon.

There have been indications that TSREEA will be interpreted in a way that may serve to impede agricultural exports to Cuba, which is contrary to the original intent of the bill. This would be a departure from current policy and undermine the benefits for U.S. farmers which the act has achieved. Groups such as the American Farm Bureau have indicated that the opening up of Cuba as a market has provided significant benefit to their members.

Without the important changes that this bill will make, the U.S. economy could be impacted, not only in agricultural exports, but also in related economic output. To prevent this occurrence and to help bolster the agricultural export industry in the U.S., I ask you to join me and the other co-sponsors in support of this important legislation.

BRUNSWICK NAVAL AIR STATION'S STRATEGIC ADVANTAGE

Ms. COLLINS. Mr. President, Brunswick Naval Air Station, which is in my own home State of Maine, is a facility of great importance to our Nation's military. While I could reflect today upon the bravery and tenacity of the P–3 Orion pilots at Brunswick who have supported the global war on terrorism, today I share with my colleagues the significant benefits and strategic advantages that Brunswick Naval Air Station offers our efforts in the areas of homeland defense and maritime interdiction operations. As we look toward the future, and develop new tools to address future threats, we must ensure that these tools are located in facilities where their advanced capabilities can be fully utilized. Therefore, I ask unanimous consent that a white paper, authored by Ralph Dean, one of Brunswick's great advocates, entitled Homeland Defense and Maritime Interdiction Operations, be printed in the CONGRESSIONAL RECORD. The white paper provides significant insight on the great advantages that Brunswick Naval Air Station offers.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

HOMELAND DEFENSE AND MARITIME INTERDICTION OPERATIONS

In the business of homeland defense (as in real estate), location is the key. Imagine a naval search for a single, relatively small merchant ship, which intelligence sources have revealed has a hold full of weaponized chemicals. Its destination is a major coastal city. After tense hours of searching, a maritime patrol aircraft locates two possible suspect vessels out of hundreds in one of the world's busiest maritime areas. The aircraft directs two fast naval frigates to the vicinity of the targets. The frigates and their onboard helicopters intercept and challenge the target vessels. One vessel submits to search and is determined to be harmless. The other however, resists interception and boarding. Finally, helicopter-borne special operations commandoes descend upon the vessel, board and secure the ship and its potentially deadly cargo.

This scenario actually occurred in the western Mediterranean Sea last month. The weapons of mass destruction seized were simulated; the entire sequence of events part of a successful exercise of Maritime Interdiction Operations conducted by forces of four NATO nations.

Maritime interdiction capability is a hot item right now for defense planners, a particularly important focus of a larger effort known as the Proliferation Security Initiative (PSI). PSI is being advanced by 15 core member nations, brought together at the request of President Bush last year to develop cooperative diplomatic, military, and intelligence means to stop ships which may be carrying weapons of mass destruction (WMD). Many of the maritime interdiction precepts under PSI are evolving from a multinational ''game'' conducted last September at the Naval War College in Newport, Rhode Island, and refining these concepts and procedures is clearly a high priority for the nations involved. Japan recently hosted the latest multinational PSI exercise, the twelfth in the short time since the Initiative began.

As the Mediterranean exercise and others showed, Maritime Patrol Aircraft (MPA) are a critical, almost always essential part of successful maritime interdiction. Whether conducting a broad-area search, refining a datum provided by other (including national) sensors, or vectoring surface, rotary-wing or

special-warfare assets to a target, MPA are a key link in the chain from initial intelligence to intercept. MPA are of particular value in crowded shipping lanes, in areas of poor weather or visibility. No other platform is as versatile in this mission area, one as old and enduring as naval aviation itself. But land-based aircraft need bases to fly from—bases which optimize their speed, range, and turnaround capability on missions protecting the nation's most vital areas. The seaborne WMD threat has become primary. Maritime interdiction platforms and infrastructure must be top concerns for naval strategists and planners.

Fortunately help is on the way, again from patrol aviation. The Multi-mission Maritime Aircraft (MMA) promises a substantial increase in capability for commanders responsible for maritime interdiction. Based on the Boeing 737–800, the MMA will bring increased speed, range, and reliability compared to the current workhorse MPA, the P–3C Orion. MMA sensors for interdiction missions will include a new electro-optical and infrared spectrum sensor, moving target indicators, an enhanced inverse synthetic aperture / synthetic aperture radar, and a new signals intelligence suite. Perhaps best of all, MMA will control and exploit the capabilities of the Broad-Area Maritime Surveillance (BAMS) Unmanned Aerial Vehicle.

The aircraft themselves will certainly be fantastic, but land-based planes are only as good as the base they operate from, and the future homes for MMA/BAMS have not yet been identified. Conventional wisdom has it that the transition from the P–3 force to one of fewer than half as many MMA will inevitably result in a reduction in the number of maritime patrol aircraft bases in the U.S. This assumption may be incorrect, since optimum basing for maritime interdiction assets is as important as the assets themselves. Bases must be located to provide rapid response to all coastal areas, particularly those containing major population centers and port facilities. They must be versatile, able to support not just MPA, but rotary wing units and special warfare forces with easy access, unencumbered space and facilities for joint, coordinated training, and self-protection and security from intrusion or attack. Maritime interdiction is a team game, and collocation of the assets for training and operations is essential.

The current MPA force laydown includes P–3 bases at Kaneohe Bay in Hawaii, Jacksonville, Florida, Brunswick, Maine, and Whidbey Island in Washington State. A robust P–3 capability is maintained for fleet support and other missions at the North Island Naval Air Station in San Diego. These last four bases, at the ''corners'' of the continental U.S. are perfectly situated for maritime interdiction of WMD threats. From these sites, MMA response time to any point on the coast will be less than two hours, and all major sea lanes of approach can be covered within the 1200—1500 nautical mile operational range of the aircraft.

All four sites have their advantages, and all are essential to that coverage. For example, the Naval Air Station in Brunswick, Maine has remarkable potential as a joint forces maritime interdiction center under the PSI initiative: The only remaining fully capable active-duty military airfield in the northeastern U.S. and near its coastal cities—a region of over 48 million people; immediately adjacent to all major sea lanes in the North Atlantic; more than 63,000 square miles of unencumbered airspace for training and exercise missions; versatile and extensive modern facilities (including a new hangar designed specifically for MMA and BAMS) and land with no encroachment issues; an established all-weather training area available for Special Forces and other units; completely secured perimeter and outstanding force protection layout and capability; and easy access by all forms of transportation.

The ports and shipping lanes to the northeastern region of the United States deserve the protection which can only be provided by maritime interdiction forces operating from a base within that region. Obviously transatlantic shipping is critical to our nation's economy, but as west coast ports operate at capacity, more and more operators are redirecting their shipments from Asia directly to the northeast. These shippers prefer to have their cargo spend the additional 7 to 10 days at sea rather than accept delays at west coast ports and during rail transport across the continent. Container traffic to New York alone has risen 65% in the last five years, the fastest rate of growth in over 50 years. All of the enormous volume of shipping to the region must be monitored, and if necessary interdicted whenever it may pose a threat.

The Defense Department's Base Closure and Realignment Commission (BRAC) will in 2005 identify military infrastructure for permanent elimination. The BRAC process must carefully factor in future requirements for maritime interdiction as they are just now being developed under the PSI. Caution is indicated—the nation cannot afford to close irreplaceable military facilities just as new concepts and capabilities are being developed to address a burgeoning threat. Maritime interdiction of weapons of mass destruction headed for our shores is zero-defect work, and the selection of bases for that effort must be equally judicious and effective. Location is an enduring essential—we must keep open our bases ''at the corners.''

ADDITIONAL STATEMENTS

VIRGINIA DAVIS COCHRAN

• Mr. LEAHY. It is with great sadness that I inform the Senate that Virginia ''Ginny'' Cochran of Richmond, VT, died this past Saturday. She was 76.

Ginny Cochran was a native Vermonter originally from Hartland Four Corners. Like her husband Mickey who died in 1998, she attended the University of Vermont. Over the years, the Cochran name became synonymous with Vermont skiing. Ginny and Mickey established their own ski area where thousands of children learned to ski. They instilled a competitive spirit in each of their four children who went on to become internationally known ski racers. One daughter, Marilyn, won a World Cup race in 1969, and another, Barbara Ann, won an Olympic gold medal in 1972. Several of Ginny's grandchildren are already outstanding ski racers.

Ginny Cochran was one of those lifelong Vermonters who personified the essence of what it means to be a Vermonter. She loved the four seasons, she was loved by her community, and she taught countless people how to enjoy freezing weather and beautiful scenery while gliding down snow covered mountains with style.

I ask that a February 6, 2005, article in the Burlington Free Press about the extraordinary life of Ginny Cochran be printed in the RECROD.

The article follows.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Burlington Free Press, Feb. 6, 2005]

SKIING MATRIARCH GINNY COCHRAN DIES

MOTHER OF OLYMPIANS TAUGHT THOUSANDS TO LOVE THE SPORT, AND SPORTSMANSHIP

(By Susan Green)

Virginia Davis Cochran, whose name has been entwined with Vermont's skiing heritage for more than four decades, died Saturday morning at age 76.

Cochran, known as Ginny, started the Cochran Ski Area in Richmond with her husband, Mickey, in 1961 and over the years taught more than 10,000 children to ski. She also helped her own four children and 10 grandchildren become top skiers—with some joining the U.S. Ski Team and one winning an Olympic gold medal.

Cochran died at Vermont Respite House in Williston of complications from non-Hodgkin's lymphoma, Mickey Cochran died in 1998.

The Cochran Ski Area began as a family affair when the couple moved to a former dairy farm along the Winooski River. They soon constructed a rope tow for their children: son Bob and daughters, Marilyn, Barbara Ann and Lindy.

Barbara Ann went on to earn the 1972 Olympic gold medal in slalom at Sapporo, Japan. In 1969, Marilyn was the first American to win a World Cup in the giant slalom.

''From the start, neighbors wanted to ski their hill,'' said David Healy, a friend of the Cochrans, ''so Ginny opened her back door and welcomed them in. Her kitchen became the lodge.''

The ski area was a modest business offering affordable access to the sport. ''They ran a small mom-and-pop operation,'' Healy said, ''and it's the nation's first nonprofit ski area.''

In the winter nowadays, 800 schoolchildren come to ski at Cochran's each week, he said.

Cochran also ran the town's after-school ski program for 35 years as a volunteer, Healy said.

Ginny Cochran, who hailed from Hartland Four Corners, met Mickey on a ski trip to Stowe while both were UVM students in the late 1940s. They married in 1949 and moved to Windsor, where Mickey taught high school science.

''They skied with their kids at Mount Ascutney,'' Healy said, ''but they came back to Burlington in 1958. He worked as an engineer at General Electric.''

With the purchase of about 190 acres in Richmond, however, the Cochran clan didn't have to stray far from home to indulge their love of the slopes.

''The kids were already racing at Smugglers' Notch,'' Healy said. ''Mickey recognized they needed to practice during the week. His goal was to give them a place to train after school.''

Peggy Farr, who met the Cochrans when they arrived in Richmond, remembers the early years at the ski area.

''When the kitchen was still the lodge, one day Ginny had made brownies for her family. My son Chuck spent a lot of time at their house. He and his pals ate them all,'' she recalled with a laugh.

By way of a belated apology, the now-grown Chuck Farr and his wife made brownies for Ginny Cochran on her 75th birthday in March 2003.

''She had a great influence on so many children,'' Peggy Farr said. ''Two of my three kids and all my grandchildren learned to ski there.''

Ditto for Marvin Carpenter, who grew up nearby on what would later be called Cochran Road.

''There'd be 60 or 70 of us kids waiting in line for their rope tow on a knoll behind the house,'' he said. ''We'd tramp through the kitchen with our ski boots on, open the fridge. If you needed gloves, they gave you gloves. The Cochrans made trampolines we could jump on as part of our ski training. In the summer, Ginny took us swimming. She was a mother to the whole community.''

Carpenter, who now owns the Bridge Street Cafe in Richmond, boasts that Ginny Cochran ''called me her second son. Of course, there are about nine other guys who make that claim.''

The Cochran skiing philosophy, Carpenter said, has always been to teach parents who would in turn teach their children. When it came to ski lessons, ''Ginny was a tough taskmaster,'' he said.

''Ginny never pulled any punches,'' said her friend Jack Linn, who got to know her in 1978. ''She was direct as all get-out, thanks to her old Vermont stock.''

As the ski area grew in popularity, the Cochrans added to the property. They bought another 140 acres in 1965. The facility includes eight trails, four lifts and a T-bar. Other lodges were built, allowing the family to reclaim its kitchen; the most recent one went up in 1984.

Although skiing was central, Ginny Cochran had other interests. ''She was an avid tennis player and loved bridge,'' said Linn, her bridge partner.

''Ginny was very competitive at everything she did,'' noted Carpenter, who participated in the regular card games, ''She also bicycled and walked a lot. This was a busy lady. I remember the calendar in her kitchen had activities written down on every day of the week.''

Linn surmised that her legacy is the kind that endures. ''Ginny was a supercitizen of Richmond.''●

NATIONAL GIRLS AND WOMEN IN SPORTS DAY

● Ms. LANDRIEU. Mr. President, I rise today to pay tribute to National Girls and Women in Sports Day.

Tomorrow evening the Louisiana State University women's basketball team, which is currently ranked No. 1 in the Nation, will take on the fifth ranked University of Tennessee's Lady Volunteers. On Friday, LSU's lady gymnastics team, ranked third in the Nation, will face the women of the University of Georgia, ranked seventh nationally.

While I mention these two sporting events to highlight the achievements of the lady Tigers, I am also citing them to show how far women's sports have come in the past 35 years. Girls and women in sports today are leading our high schools, our colleges and universities, and our society. Seimone Augustus, the 6′ 1″ guard for LSU's women's basketball team, is now a candidate to receive the Player of the Year Award for 2005. Last year, Carly Patterson of Baton Rouge, LA, became the first American woman since Mary Lou Retton to win the women's all-around competition for gymnastics.

In an age in which one in six girls are obese and heart disease is the number one cause of death among American women, it is important that we encourage our girls to participate in athletics and other physical activities. And the benefits that girls receive from participating in sports are far more than physical. Through sports, young girls learn leadership, self confidence, teamwork, and a host of other skills that they will use through their entire life. It is important that we, as a society, support these girls and women in their athletic endeavors.

Aside from just praising the fine women sports teams of Louisiana, I would like to offer special thanks to the organizations that are members of the coalition for National Girls and Women in Sports Day: the American Association of University Women, Girl Scouts of the USA, Girls Incorporated, the National Association for Girls and Women in Sports, the National Women's Law Center, the Women's Sports Foundation, and the YWCA USA.

Introducing our young women to athletics and encouraging their active participation in such events, is an important task, and one I look forward to doing with my own daughter. Today I commend the achievements of all girls and women throughout this country that participate in sports, and ask that my colleagues join me in honoring the National Girls and Women in Sports Day.●

TRIBUTE TO UNDEFEATED AUBURN UNIVERSITY TIGERS

● Mr. SHELBY. Mr. President, I rise today to pay tribute to the undefeated 2004 Auburn University football team. The Auburn Tigers went 13–0 this season winning both the Southeastern Conference Championships and the Nokia Sugar Bowl. They finished the season tied for the best record in the land and, in my opinion, made a strong case for a national championship.

The Auburn Tigers finished the season ranked first in the Nation in scoring defense and fifth in the Nation in total defense. They also won four games over Associated Press top 10 teams—the most of any Division I team during the 2004 season.

While many Auburn players and coaches received individual accolades throughout the season, I believe that their dedication to extraordinary teamwork is an enduring tribute more impressive than any trophy or award. Saturday after Saturday, this team came prepared to play their hearts out and leave it all on the field. As the weeks passed, it became apparent to anyone watching that their efforts were more about a team, a brotherhood, and a community focused on victory than on individual accomplishments. The dedication, hard work, and focus of these players and their coaches are undeniable.

Individually, Auburn's players accomplished great things. Four Auburn players earned All-America honors: offensive tackle Marcus McNeill, defensive back Carlos Rogers, safety Junior Rosegreen, and running back Carnell Williams. Two freshmen, Stanley McClover and Quenton Groves, earned Freshman All-America honors, and Carlos Rogers won the Jim Thorpe Award, which is presented to the Nation's top defensive back. Senior quarterback Jason Campbell won the most valuable player award for the Sugar Bowl and the Southeastern Conference Championship game; while also garnering SEC offensive player of the year and SEC player of the year honors as well as Most Valuable Player of the South squad in the 2005 Senior Bowl.

I believe it is important to emphasize that the young men who make up this outstanding Auburn football team understand that they are students first, and then athletes. The academic focus of these players is exemplified by the fact that 9 of the 18 seniors playing in the Sugar Bowl had already earned their bachelor's degrees and 17 players made the Southeastern Conference Academic honor roll. I commend the players and coaches for ensuring that academic achievement is not sacrificed for athletic success.

Auburn's head coach Tommy Tuberville is to be commended for his achievements as well. Coach Tuberville was the recipient of six Coach of the Year awards including the Associated Press, Paul ''Bear'' Bryant, American Football Coaches Association, Schutt Sports, Walker Camp, and Southeastern Conference awards.

I join Auburn fans across the country in recognizing their accomplishments, honoring their achievements and praising their teamwork. I am proud of their outstanding record and am inspired by their ability to overcome adversity to achieve success. The Auburn University Tigers showed football fans everywhere what it means to play as a team.●

HONORING VEL PHILLIPS

● Mr. FEINGOLD. Mr. President, today I honor the accomplishments of Vel Phillips, a pioneer in Wisconsin history, who turns 81 on February 18.

The celebration of Black History Month in the State of Wisconsin cannot be complete without including Vel. In 1951, Vel was the first African-American woman to graduate from the University of Wisconsin Law School. She and her husband Dale moved to Milwaukee, where they became the first husband-wife attorney team admitted to the Federal bar.

Vel's is a household name in Milwaukee, where she was first inspired to run for office doing door-to-door voter registration. She was the first woman and first African American elected to the Milwaukee Common Council. Vel literally came under fire as she fought for open housing in Milwaukee, when gunshots left a bullet lodged in her oven. But no threats, no matter how real or how terrifying, could change Vel's unshakeable commitment to making Milwaukee a more just city and to making the world a better place.

Dr. Martin Luther King, Jr., said, ''We must be the drum majors for

peace,'' and Vel heeded his marching orders. She was arrested at a rally at the burned-out NAACP Freedom House, the site of a previous night's retaliatory firebombing. Two weeks before Dr. King's assassination, the Milwaukee Common Council passed the open housing bill.

In 1971, Vel Phillips was appointed Wisconsin's first African-American judge. In 1978, she again reached another milestone with her election as secretary of state, first statewide office held by an African American. Now, at 81, Vel continues to make a difference in Milwaukee, and it is a privilege to call her a friend.

Vel Phillips is a distinguished figure in the progress of the civil rights movement in Wisconsin. Her life of firsts and steadfast determination to make a difference is an inspiration to me and a reminder of the need to advance and protect the civil rights of all Americans as we celebrate Black History Month.●

RECOGNIZING ERIC A. ORSINI

● Mr. ALLEN. Mr. President, I'm extremely proud to recognize a dedicated American who has retired after 64 years of service to the United States Army. This month, Mr. Eric A. Orsini of Stafford, VA, departed Government work at the age of 87.

Mr. Orsini began his service to country as a private in the Army in 1941. During World War II, he was highly decorated, earning the Bronze Star, the Silver Star and the Purple Heart in combat which included fighting in the Battle of the Bulge. Upon retiring from the military as a Colonel with 30 years of service, Mr. Orsini began working as a Senior Executive in the Department of the Army, where he would spend an additional 34 years, specializing in improving logistics support to our soldiers.

Today, I wish Mr. Orsini the best in his well-deserved retirement. I'm pleased to hear that he will now finally have the opportunity to improve his golf game, go fishing more often and spend more time with his family.

It is truly an honor to recognize a fellow Virginian for his distinguished service as both a soldier and a government civil servant. Mr. Orsini, your country thanks you for your courageous and meritorious work in the name of freedom.●

RECOGNIZING LTC DANIEL L. ROBEY

● Mr. ALLEN. Mr. President, I am pleased today to recognize LTC Daniel Lance Robey for his military service and leadership. LTC Robey recently retired after serving 19 years in the U.S. Army Reserve as a Judge Advocate and Civil Affairs Officer.

A Fairfax county native, Lieutenant Colonel Robey graduated from W.T. Woodson High School, received his B.A. degree from Lebanon Valley College and then went on to receive his J.D. from George Mason University School of Law. During his military service, he has received numerous decorations and awards, including the Purple Heart after serving in the Vietnam War, the Bronze Star Medal, three Meritorious Service Medals and four Army Commendation Medals and recently, the Legion of Merit.

Earlier in his military judicial career, LTC Robey was deployed to Bosnia in support of Operation Joint Endeavor as an International Law Officer. Recently, he was a part of the U.S. Army Special Operations Command and was deployed to Baghdad in support of Operation Iraqi Freedom as a Civil Affairs Officer.

Lieutenant Colonel Robey currently works in Fairfax County as a litigator. He and his wife, Lisa, live in Reston. He has three sons, Brian, Kevin and Matthew. Among his military peers, the Lieutenant Colonel is regarded as a ''legend'' and surely will be missed in his retirement from the service. Today, I congratulate him on his outstanding performance of meritorious service to the Armed Forces of the United States and wish him well in his future endeavors.●

MESSAGE FROM THE PRESIDENT

A message from the President of the United States was communicated to the Senate by Ms. Evans, one of his secretaries.

EXECUTIVE MESSAGE REFERRED

As in executive session the Presiding Officer laid before the Senate a message from the President of the United States submitting nominations which was referred to the Committee on Armed Services.

(The nomination received today is printed at the end of the Senate proceedings.)

REPORT CONCERNING THE PLAN FOR SECURING NUCLEAR WEAPONS, MATERIAL, AND EXPERTISE OF THE STATES OF THE FORMER SOVIET UNION—PM 4

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Armed Services:

To the Congress of the United States:

Consistent with section 1205 of the National Defense Authorization Act for Fiscal Year 2003 (Public Law 107–314), I am providing a report prepared by my Administration on implementation during 2003 of the plan for securing nuclear weapons, material, and expertise of the states of the former Soviet Union.

GEORGE W. BUSH.

THE WHITE HOUSE, *February 8, 2005.*

MESSAGE FROM THE HOUSE

At 2:59 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bills in which it requests the concurrence of the Senate:

H.R. 315. An act to designate the United States courthouse at 300 North Hogan Street, Jacksonville, Florida, as the ''John Milton Bryan Simpson United States Courthouse''.

H.R. 548. An act to designate the Federal building and United States courthouse located at 200 West 2nd Street in Dayton, Ohio, as the ''Tony Hall Federal Building and United States Courthouse''.

MEASURES REFERRED

The following bills were read the first and the second times by unanimous consent, and referred as indicated:

H.R. 315. An act to designate the United States courthouse at 300 North Hogan Street, Jacksonville, Florida, as the ''John Milton Bryan Simpson United States Courthouse''; to the Committee on Environment and Public Works.

H.R. 548. An act to designate the Federal building and United States courthouse located at 200 West 2nd Street in Dayton, Ohio, as the ''Tony Hall Federal Building and United States Courthouse''; to the Committee on Environment and Public Works.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–644. A communication from the Regulation Coordinator, Centers for Beneficiary Choices, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled ''Medicare Program; Medicare Prescription Drug Benefit'' (RIN0938–AN08) received on January 25, 2005; to the Committee on Finance.

EC–645. A communication from the Regulation Coordinator, Centers for Beneficiary Choices, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled ''Medicare Program; Medicare Prescription Drug Benefit'' (RIN0938–AN08) received on January 25, 2005; to the Committee on Finance.

EC–646. A communication from the Federal Register Certifying Officer, Financial Management Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Offset of Tax Refund Payments to Collect States Income Tax Obligations'' (RIN1510–AA78) received on January 25, 2005; to the Committee on Finance.

EC–647. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Look Through Certain Cases'' (Rev. Rul. 5005–7) received on January 25, 2005; to the Committee on Finance.

EC–648. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Life Insurance Contract Defined'' (Rev. Rul. 2005–6) received on January 25, 2005; to the Committee on Finance.

EC–649. A communication from the Acting Chief, Publications and Regulations Branch,

Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Bureau of Labor Statistics Price Indexes for Department Stores—November 2004'' (Rev. Rul. 2005–5) received January 25, 2005; to the Committee on Finance.

EC–650. A communication from the Acting Chief, Publications and Regulations, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Applicable Federal Rates—February 2005'' (Rev. Rul. 2005–8) received January 25, 2005; to the Committee on Finance.

EC–651. A communication from the Deputy Assistant Attorney General, Office of Legal Policy, Office of the Attorney General, Department of Justice, transmitting, pursuant to law, the report of a rule entitled ''DNA Sample Collection from Federal Offenders under the Justice for All Act of 2004'' (RIN1105–AB09) received February 1, 2005; to the Committee on the Judiciary.

EC–652. A communication from the Assistant Chief, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Establishment of the McMinnville Viticultural Area'' (RIN1513–AA63) received February 7, 2005; to the Committee on the Judiciary.

EC–653. A communication from the Chief, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Flavored Malt Beverages and Related Regulatory Amendments'' (RN1513–AA12) received on February 7, 2005; to the Committee on the Judiciary.

EC–654. A communication from the Director, Office of Congressional Affairs, Nuclear Regulatory Commission, transmitting, pursuant to law, the report of a rule entitled ''Final Amendments to 10 CFR Part 50, Appendix E Relating to (1) Nuclear Regulatory Commission Review of Changes to Emergency Action Levels, Paragraph IV.B. and (2) Exercise Requirements for Co-Located Licensees, Paragraph IV.F.2.'' (RIN3150–AH00) received on January 25, 2005; to the Committee on Environment and Public Works.

EC–655. A communication from the Acting Assistant Administrator, Office of Administration and Resources Management, Environmental Protection Agency, transmitting, pursuant to law, the Agency's 2004 Competitive Sourcing Report; to the Committee on Environment and Public Works.

EC–656. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Air Quality Implementation Plans; Maine; Portable Fuel Containers'' (FRL 7863–2) received February 2, 2005; to the Committee on Environment and Public Works.

EC–657. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plans for Florida: Citrus Juice Processing'' (FRL 7869–2) received February 2, 2005; to the Committee on Environment and Public Works.

EC–658. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plans; State of Missouri'' (FRL 7867–2) received February 2, 2005; to the Committee on Environment and Public Works.

EC–659. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Hazardous Waste Management System; Modification of the Hazardous Waste Manifest System'' (FRL 7867–4) received February 2, 2005; to the Committee on Environment and Public Works.

EC–660. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''National Emission Standards for Hazardous Air Pollutants for Leather Finishing Operations'' (FRL 7869–7) received February 2, 2005; to the Committee on Environment and Public Works.

EC–661. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units'' (FRL 7969–9) received February 2, 2005; to the Committee on Environment and Public Works.

EC–662. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''OMB Approvals Under the Paperwork Reduction Act; Amendment'' (FRL 7869–5) received February 2, 2005; to the Committee on Environment and Public Works.

EC–663. A communication from the Assistant Legal Advisor for Treaty Affairs, Department of State, transmitting, pursuant to law, the report of the texts and background statements of international agreements, other than treaties; to the Committee on Foreign Relations.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. AKAKA (for himself, Mr. BINGAMAN, Mr. SARBANES, Mr. DAYTON, and Mr. DURBIN):

S. 324. A bill to provide additional protections for recipients of the earned income tax credit; to the Committee on Finance.

By Mr. LEVIN (for himself and Ms. COLLINS):

S. 325. A bill to amend title 23, United States Code, to establish programs to facilitate international and interstate trade; to the Committee on Environment and Public Works.

By Mr. SMITH (for himself, Ms. CANTWELL, Mrs. FEINSTEIN, and Mrs. MURRAY):

S. 326. A bill to reauthorize and revise the Renewable Energy Production Incentive program, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. SANTORUM (for himself and Mrs. LINCOLN):

S. 327. A bill to amend the Internal Revenue Code of 1986 to expand the tip credit to certain employers and to promote tax compliance; to the Committee on Finance.

By Mr. CRAIG (for himself, Mr. BAUCUS, Mr. ROBERTS, Mr. LUGAR, Mr. HAGEL, Mr. TALENT, Mr. ENZI, Mr. CHAFEE, Mr. CRAPO, Mr. THUNE, Mrs. HUTCHISON, Mrs. MURRAY, Mr. BINGAMAN, Mrs. LINCOLN, Mr. DORGAN, Mr. NELSON of Nebraska, Mr. JOHNSON, Mr. PRYOR, Ms. LANDRIEU, and Mr. HARKIN):

S. 328. A bill to facilitate the sale of United States agricultural products to Cuba, as authorized by the Trade Sanctions Reform and Export Enhancement Act of 2000; to the Committee on Foreign Relations.

By Mr. ROCKEFELLER (for himself and Mr. LEAHY):

S. 329. A bill to amend title 11, United States Code, to increase the amount of unsecured claims for salaries and wages given priority in bankruptcy, to provide for cash payments to retirees to compensate for lost health insurance benefits resulting from the bankruptcy of their former employer, and for other purposes; to the Committee on the Judiciary.

By Mr. ENSIGN (for himself, Mr. REID, Mr. BURNS, Mrs. FEINSTEIN, Mr. NELSON of Florida, Mr. CHAFEE, Mr. SUNUNU, Mr. DURBIN, and Mr. DAYTON):

S. 330. A bill to amend the Help America Vote Act of 2002 to require a voter-verified permanent record or hardcopy under title III of such Act, and for other purposes; to the Committee on Rules and Administration.

By Mr. JOHNSON (for himself, Mr. NELSON of Nebraska, and Mr. DURBIN):

S. 331. A bill to amend title 38, United States Code, to provide for an assured adequate level of funding for veterans health care; to the Committee on Veterans' Affairs.

By Mr. DOMENICI (for himself and Mr. BINGAMAN):

S. 332. A bill to prohibit the retirement of F-117 Nighthawk stealth attack aircraft during fiscal year 2006; to the Committee on Armed Services.

By Mr. SANTORUM:

S. 333. A bill to hold the current regime in Iran accountable for its threatening behavior and to support a transition to democracy in Iran; to the Committee on Foreign Relations.

By Mr. DORGAN (for himself, Ms. SNOWE, Mr. GRASSLEY, Mr. KENNEDY, Mr. MCCAIN, Ms. STABENOW, Mr. CHAFEE, Mr. JEFFORDS, Mr. LOTT, Mr. DAYTON, Mrs. CLINTON, Mr. BINGAMAN, Mrs. BOXER, Mr. CONRAD, Mr. DURBIN, Mr. FEINGOLD, Mrs. FEINSTEIN, Mr. INOUYE, Mr. JOHNSON, Mr. KOHL, Mr. LEAHY, Mr. LEVIN, Mr. NELSON of Florida, Mr. OBAMA, Mr. PRYOR, Mr. SALAZAR, Mr. SARBANES, Mr. SCHUMER, and Ms. COLLINS):

S. 334. A bill to amend the Federal Food, Drug, and Cosmetic Act with respect to the importation of prescription drugs, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. LIEBERMAN (for himself, Ms. COLLINS, and Mr. CRAIG):

S. 335. A bill to reauthorize the Congressional Award Act; to the Committee on Homeland Security and Governmental Affairs.

By Mr. SARBANES (for himself, Mr. WARNER, Mr. ALLEN, and Ms. MIKULSKI):

S. 336. A bill to direct the Secretary of the Interior to carry out a study of the feasibility of designating the Captain John Smith Chesapeake National Historic Watertrail as a national historic trail; to the Committee on Energy and Natural Resources.

By Mr. GRAHAM (for himself, Mrs. CLINTON, Mr. DEWINE, Mr. LEAHY, Mr. ALLEN, Ms. CANTWELL, and Mr. REID):

S. 337. A bill to amend title 10, United States Code, to revise the age and service requirements for eligibility to receive retired pay for non-regular service, to expand certain authorities to provide health care benefits for Reserves and their families, and for other purposes; to the Committee on Armed Services.

By Mr. SMITH (for himself, Mr. BINGAMAN, Ms. SNOWE, Mr. JEFFORDS, Mr. SANTORUM, Mr. KERRY, Mr. DEWINE, Mr. DURBIN, Mr. CHAFEE, Mrs. LINCOLN, Ms. COLLINS, Mr. NELSON of Nebraska, Mr . VOINOVICH, Mr. CORZINE, and Mr. COLEMAN):

S. 338. A bill to provide for the establishment of a Bipartisan Commission on Medicaid; to the Committee on Finance.

By Mr. REID (for himself, Mr. BAUCUS, Mr. STEVENS, Mr. NELSON of Nebraska, and Mr. ENSIGN):

S. 339. A bill to reaffirm the authority of States to regulate certain hunting and fishing activities; to the Committee on the Judiciary.

By Mr. LUGAR:

S. 340. A bill to maintain the free flow of information to the public by providing conditions for the federally compelled disclosure of information by certain persons connected with the news media; to the Committee on the Judiciary.

ADDITIONAL COSPONSORS

S. 5

At the request of Mr. ALLEN, his name was added as a cosponsor of S. 5, a bill to amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, and for other purposes.

S. 33

At the request of Ms. CANTWELL, the name of the Senator from Minnesota (Mr. DAYTON) was added as a cosponsor of S. 33, a bill to prohibit energy market manipulation.

S. 98

At the request of Mr. ALLARD, the name of the Senator from New Mexico (Mr. BINGAMAN) was added as a cosponsor of S. 98, a bill to amend the Bank Holding Company Act of 1956 and the Revised Statutes of the United States to prohibit financial holding companies and national banks from engaging, directly or indirectly, in real estate brokerage or real estate management activities, and for other purposes.

S. 103

At the request of Mrs. FEINSTEIN, the name of the Senator from Wisconsin (Mr. KOHL) was added as a cosponsor of S. 103, a bill to respond to the illegal production, distribution, and use of methamphetamine in the United States, and for other purposes.

S. 119

At the request of Mrs. FEINSTEIN, the name of the Senator from Hawaii (Mr. AKAKA) was added as a cosponsor of S. 119, a bill to provide for the protection of unaccompanied alien children, and for other purposes.

S. 185

At the request of Mr. NELSON of Florida, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 185, a bill to amend title 10, United States Code, to repeal the requirement for the reduction of certain Survivor Benefit Plan annuities by the amount of dependency and indemnity compensation and to modify the effective date for paid-up coverage under the Survivor Benefit Plan.

S. 193

At the request of Mr. BROWNBACK, the name of the Senator from Oklahoma (Mr. COBURN) was added as a cosponsor of S. 193, a bill to increase the penalties for violations by television and radio broadcasters of the prohibitions against transmission of obscene, indecent, and profane language.

S. 217

At the request of Mr. BINGAMAN, the name of the Senator from Arkansas (Mrs. LINCOLN) was added as a cosponsor of S. 217, a bill to amend title 49, United States Code, to preserve the essential air service program.

S. 241

At the request of Ms. SNOWE, the names of the Senator from New Jersey (Mr. CORZINE) and the Senator from Connecticut (Mr. DODD) were added as cosponsors of S. 241, a bill to amend section 254 of the Communications Act of 1934 to provide that funds received as universal service contributions and the universal service support programs established pursuant to that section are not subject to certain provisions of title 31, United States Code, commonly known as the Antideficiency Act.

S. 249

At the request of Mr. REID, the name of the Senator from Utah (Mr. HATCH) was added as a cosponsor of S. 249, a bill to establish the Great Basin National Heritage Route in the States of Nevada and Utah.

S. 263

At the request of Mr. AKAKA, the names of the Senator from Kentucky (Mr. BUNNING) and the Senator from Oregon (Mr. WYDEN) were added as cosponsors of S. 263, a bill to provide for the protection of paleontological resources on Federal lands, and for other purposes.

S. 285

At the request of Mr. BOND, the name of the Senator from Virginia (Mr. WARNER) was added as a cosponsor of S. 285, a bill to reauthorize the Children's Hospitals Graduate Medical Education Program.

S. 291

At the request of Mr. ENSIGN, the name of the Senator from Oklahoma (Mr. COBURN) was added as a cosponsor of S. 291, a bill to require the withholding of United States contributions to the United Nations until the President certifies that the United Nations is cooperating in the investigation of the United Nations Oil-for-Food Program.

S. 317

At the request of Mr. FEINGOLD, the name of the Senator from Vermont (Mr. LEAHY) was added as a cosponsor of S. 317, a bill to protect privacy by limiting the access of the Government to library, bookseller, and other personal records for foreign intelligence and counterintelligence purposes.

S. RES. 8

At the request of Ms. COLLINS, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. Res. 8, a resolution expressing the sense of the Senate regarding the maximum amount of a Federal Pell Grant.

S. RES. 37

At the request of Mrs. MURRAY, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. Res. 37, a resolution designating the week of February 7 through February 11, 2005, as ''National School Counseling Week''.

S. RES. 40

At the request of Ms. LANDRIEU, the name of the Senator from Connecticut (Mr. LIEBERMAN) was added as a cosponsor of S. Res. 40, a resolution supporting the goals and ideas of National Time Out Day to promote the adoption of the Joint Commission on Accreditation of Healthcare Organizations' universal protocol for preventing errors in the operating room.

AMENDMENT NO. 2

At the request of Mr. KENNEDY, the name of the Senator from New Jersey (Mr. LAUTENBERG) was added as a cosponsor of amendment No. 2 proposed to S. 5, a bill to amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. AKAKA (for himself, Mr. BINGAMAN, Mr. SARBANES, Mr. DAYTON, and Mr. DURBIN):

S. 324. A bill to provide additional protections for recipients of the earned income tax credit; to the Committee on Finance.

Mr. AKAKA. Mr. President, I rise to introduce the Taxpayer Abuse Prevention Act. Earned income tax credit, EITC, benefits intended for working families are significantly reduced by the use of refund anticipation loans, RALs, which typically carry triple digit interest rates.

According to the Brookings Institution, an estimated $1.9 billion intended to assist low-income families was received by commercial tax preparers and affiliated national banks to pay for tax assistance, electronic filing of returns, and high-cost refund loans in 2002. Fifty-seven percent of consumers who received RALs in 2003 earned the EITC. The Children's Defense Fund recently conducted a review of EITC refunds in eight states and the District of Columbia. In Texas, it is estimated that EITC families lost an estimated $251 million in tax preparation fees and high interest loans. EITC families had an estimated $82.6 million diverted to tax preparers in Ohio.

The interest rates and fees charged on RALs are not justified because of the short length of time that these loans are outstanding and the minimal risk they present. These loans carry little risk because of the Debt Indicator program.

The Debt Indicator, DI, is a service provided by the Internal Revenue Service, IRS, that informs the lender whether or not an applicant owes Federal or state taxes, child support, student loans, or other Government obligations, which assists the tax preparer in ascertaining the applicant's ability to obtain their full refund so that the RAL is repaid. The Department of the Treasury should not be facilitating these predatory loans that allow tax preparers to reap outrageous profits by exploiting working families.

Unfortunately too many working families are susceptible to predatory lending because they are left out of the financial mainstream. Between 25 and 56 million adults are unbanked, or not using mainstream, insured financial institutions. The unbanked rely on alternative financial service providers to obtain cash from checks, pay bills, send remittances, utilize payday loans, and obtain credit. Many of the unbanked are low- and moderate-income families that can ill afford to have their earnings unnecessarily diminished by their reliance on these high-cost and often predatory financial services. In addition, the unbanked are unable to save securely to prepare for the loss of a job, a family illness, a down payment on a first home, or education expenses.

My bill will protect consumers against predatory loans, reduce the involvement of the Department of the Treasury in facilitating the exploitation of taxpayers, and expand access to opportunities for saving and lending at mainstream financial services.

My bill prohibits refund anticipation loans that utilize EITC benefits. Other Federal benefits, such as Social Security, have similar restrictions to ensure that the beneficiaries receive the intended benefit.

My bill also limits several of the objectionable practices of RAL providers. It will prohibit lenders from using tax refunds to collect outstanding obligations for previous RALs. In addition, mandatory arbitration clauses for RALs that utilize Federal tax refunds would be prohibited to ensure that consumers have the ability to take future legal action if necessary.

I am deeply troubled that the Department of the Treasury plays such a prominent role in the facilitation and subsequent promotion of refund anticipation loans. In 1995, the use of the DI was suspended because of massive fraud in e-filed returns with RALs. After the program was discontinued, RAL participation declined. The use of the DI was reinstated in 1999, according to H&R Block, to ''assist with screening for electronic filing fraud and is also expected to substantially reduce refund anticipation loan pricing.'' Although RAL prices were expected to go down as a result of the reinstatement of the DI, this has not occurred. Use of the Debt Indicator should once again be stopped. The DI is helping tax preparers make excessive profits from low- and moderate-income taxpayers who utilize RALs. The IRS should not be aiding efforts that take the earned benefit away from low-income families and allow unscrupulous preparers to take advantage of low-income taxpayers. My bill terminates the DI program. In addition, this bill removes the incentive to meet congressionally mandated electronic filing goals by facilitating the exploitation of taxpayers. My bill would exclude any electronically filed tax returns resulting in tax refunds distributed by refund anticipation loans from being counted towards the goal established by the IRS Restructuring and Reform Act of 1998, which is to have at least 80 percent of all returns filed electronically by 2007.

Mr. President, my bill also expands access to mainstream financial services. Electronic Transfer Accounts, ETA, are low-cost accounts at banks and credit unions intended for recipients of certain Federal benefit payments. Currently, ETAs are provided for recipients of other Federal benefits such as Social Security payments. My bill expands the eligibility for ETAs to include EITC benefits. These accounts will allow taxpayers to receive direct deposit refunds into an account without the need for a refund anticipation loan.

Furthermore, my bill would mandate that low- and moderate-income taxpayers be provided opportunities to open low-cost accounts at federally insured banks or credit unions via appropriate tax forms. Providing taxpayers with the option of opening a bank or credit union account through the use of tax forms provides an alternative to RALs and immediate access to financial opportunities found at banks and credit unions.

I thank my colleagues, Senators BINGAMAN, SARBANES, DAYTON, and DURBIN for cosponsoring this legislation. I also thank Representative JAN SCHAKOWSKY for introducing the companion legislation in the other body.

I ask unanimous consent that the text of the Taxpayer Abuse Prevention Act, support letters and an accompanying fact sheet from the Association of Community Organizations for Reform, the Children's Defense Fund, the Consumer Federation of America, Consumers Union, the National Consumer Law Center, the Center for Responsible Lending, and the text of the national summary of the refund anticipation studies done by the Children's Defense Fund be printed in the RECORD.

I urge my colleagues to support this important legislation that will restrict predatory RALs and expand access to mainstream financial services.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 324

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Taxpayer Abuse Prevention Act''.

SEC. 2. PREVENTION OF DIVERSION OF EARNED INCOME TAX CREDIT BENEFITS.

(a) IN GENERAL.—Section 32 of the Internal Revenue Code of 1986 (relating to earned income tax credit) is amended by adding at the end the following new subsection:

''(n) PREVENTION OF DIVERSION OF CREDIT BENEFITS.—The right of any individual to any future payment of the credit under this section shall not be transferable or assignable, at law or in equity, and such right or any moneys paid or payable under this section shall not be subject to any execution, levy, attachment, garnishment, offset, or other legal process except for any outstanding Federal obligation. Any waiver of the protections of this subsection shall be deemed null, void, and of no effect.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 3. PROHIBITION ON DEBT COLLECTION OFFSET.

(a) IN GENERAL.—No person shall, directly or indirectly, individually or in conjunction or in cooperation with another person, engage in the collection of an outstanding or delinquent debt for any creditor or assignee by means of soliciting the execution of, processing, receiving, or accepting an application or agreement for a refund anticipation loan or refund anticipation check that contains a provision permitting the creditor to repay, by offset or other means, an outstanding or delinquent debt for that creditor from the proceeds of the debtor's Federal tax refund.

(b) REFUND ANTICIPATION LOAN.—For purposes of subsection (a), the term ''refund anticipation loan'' means a loan of money or of any other thing of value to a taxpayer because of the taxpayer's anticipated receipt of a Federal tax refund.

(c) EFFECTIVE DATE.—This section shall take effect on the date of the enactment of this Act.

SEC. 4. PROHIBITION OF MANDATORY ARBITRATION.

(a) IN GENERAL.—Any person that provides a loan to a taxpayer that is linked to or in anticipation of a Federal tax refund for the taxpayer may not include mandatory arbitration of disputes as a condition for providing such a loan.

(b) EFFECTIVE DATE.—This section shall apply to loans made after the date of the enactment of this Act.

SEC. 5. TERMINATION OF DEBT INDICATOR PROGRAM.

The Secretary of the Treasury shall terminate the Debt Indicator program announced in Internal Revenue Service Notice 99–58.

SEC. 6. DETERMINATION OF ELECTRONIC FILING GOALS.

(a) IN GENERAL.—Any electronically filed Federal tax returns, that result in Federal tax refunds that are distributed by refund anticipation loans, shall not be taken into account in determining if the goals required under section 2001(a)(2) of the Restructuring and Reform Act of 1998 that the Internal Revenue Service have at least 80 percent of all such returns filed electronically by 2007 are achieved.

(b) REFUND ANTICIPATION LOAN.—For purposes of subsection (a), the term ''refund anticipation loan'' means a loan of money or of any other thing of value to a taxpayer because of the taxpayer's anticipated receipt of a Federal tax refund.

SEC. 7. EXPANSION OF ELIGIBILITY FOR ELECTRONIC TRANSFER ACCOUNTS.

(a) IN GENERAL.—The last sentence of section 3332(j) of title 31, United States Code, is amended by inserting ''other than any payment under section 32 of such Code'' after ''1986''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to payments made after the date of the enactment of this Act.

SEC. 8. PROGRAM TO ENCOURAGE THE USE OF THE ADVANCE EARNED INCOME TAX CREDIT.

(a) IN GENERAL.—Not later than 6 months after the date of the enactment of this Act, the Secretary of the Treasury shall, after consultation with such private, nonprofit, and governmental entities as the Secretary determines appropriate, develop and implement a program to encourage the greater utilization of the advance earned income tax credit.

(b) REPORTS.—Not later than the date of the implementation of the program described in subsection (a), and annually thereafter, the Secretary of the Treasury shall report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives on the elements of such program and progress achieved under such program.

(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated such sums as are necessary to carry out the program described in this section. Any sums so appropriated shall remain available until expended.

SEC. 9. PROGRAM TO LINK TAXPAYERS WITH DIRECT DEPOSIT ACCOUNTS AT FEDERALLY INSURED DEPOSITORY INSTITUTIONS.

(a) ESTABLISHMENT OF PROGRAM.—Not later than 1 year after the date of the enactment of this Act, the Secretary of the Treasury shall enter into cooperative agreements with federally insured depository institutions to provide low- and moderate-income taxpayers with the option of establishing low-cost direct deposit accounts through the use of appropriate tax forms.

(b) FEDERALLY INSURED DEPOSITORY INSTITUTION.—For purposes of this section, the term ''federally insured depository institution'' means any insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)) and any insured credit union (as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752)).

(c) OPERATION OF PROGRAM.—In providing for the operation of the program described in subsection (a), the Secretary of the Treasury is authorized—

(1) to consult with such private and nonprofit organizations and Federal, State, and local agencies as determined appropriate by the Secretary, and

(2) to promulgate such regulations as necessary to administer such program.

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated such sums as are necessary to carry out the program described in this section. Any sums so appropriated shall remain available until expended.

NATIONAL CONSUMER LAW CENTER INC,
Boston, MA, February 7, 2005.

Hon. DANIEL K. AKAKA,
U.S. Senate,
Washington, DC.

DEAR SENATOR AKAKA: The Association of Community Organizations for Reform Now (ACORN), Center for Responsible Lending, Children's Defense Fund, Consumer Federation of America, Consumers Union, and National Consumer Law Center (on behalf of its low-income clients), write to support your bill, the ''Taxpayer Abuse Prevention Act.'' By prohibiting lenders from making loans against the Earned Income Tax Credit, this bill would greatly reduce the scope of abuses caused by refund anticipation loans (RALs), which carry effective annualized interest rates of about 40% to over 700%.

According to IRS data, 57% of consumers who received RALs in 2003 were beneficiaries of the Earned Income Tax Credit. These EITC recipients paid about $740 million in loan and ''administrative'' fees for RALs. These fees divert hundreds of millions of EITC dollars, paid out of the U.S. Treasury, into the coffers of multimillion dollar commercial preparation chains and big banks. It's time to stop lenders from making high cost, abusive loans using the precious dollars intended to support working poor families.

Furthermore, we support the ''Taxpayer Abuse Prevention Act'' for its provisions that halt several of the most egregious practices of RAL lenders, such as seizing taxpayers' tax refunds as a form of debt collection and slipping in mandatory arbitration clauses, which leave RAL consumers without their day in court. Moreover, we appreciate the termination of the IRS Debt Indicator program, which would stop the IRS's practice of sharing taxpayer's personal financial information in order to make RALs more profitable for lenders. Finally, we applaud the provisions of the bill that support linking unbanked taxpayers with bank accounts, such as the provision to permit them to open Electronic Transaction Accounts to receive federal tax refunds.

Thank you again for all your efforts to combat taxpayer abuse by the RAL industry.

Sincerely,

Maude Hurd, National President Association of Community Organizations for Reform Now; Jean Ann Fox, Director of Consumer Protection, Consumer Federation of America; Chi Chi Wu, Staff Attorney, National Consumer Law Center; Deborah Cutler-Ortiz, Director of Family Income, Children's Defense Fund; Susanna Montezemolo, Legislative Representative, Consumers Union; Yolanda McGill, Senior Policy Counsel, Center for Responsible Lending.

HOW THE TAXPAYER ABUSE PREVENTION ACT ADDRESSES THE WORST ASPECT OF REFUND ANTICIPATION LOANS

What are Refund Anticipation Loans (RALs)?

Refund anticipation loans (RALs) are high cost short-term loans secured by taxpayers' expected tax refunds. To get a RAL, consumers pay:

A loan fee to the lender, ranging from about $30 to $115 in 2005.

A fee for commercial tax preparation, typically around $120;

In some cases, a fee to the commercial preparer to process the RAL, sometimes called a ''administrative'', ''application'', or ''document preparation'' fee, around $30;

Who gets RALs?

Over 12 million taxpayers got RALs in 2003, according to the latest available data from IRS, costing taxpayers an estimated $1.4 billion dollars. Nearly 80% of these taxpayers are low-income, making less than $35,000 per year. Over half taxpayers who get RALs receive the Earned Income Tax Credit (EITC). The EITC is a tax benefit for working people who earn low or moderate incomes. It reduces the tax burden on these working families, boosting millions of households out of poverty. EITC recipients are disproportionately represented in the ranks of those who get RALs, since these taxpayers make up just 17% of the taxpayer population. RALs cost EITC recipients $740 million in loan and application/administrative fees, plus these EITC recipients paid nearly an estimated $1 billion in tax preparation and check cashing fees.

What are some of the problems with RALs?

RALs drain hundreds of millions in EITC benefits, and diminish the EITC's poverty-fighting power.

The Taxpayer Abuse Prevention Act prohibits RALs made against EITC funds. RAL contracts permit a lender to grab a taxpayer' refund to repay any outstanding RAL debt, even if the debt was to another lender.

The Taxpayer Abuse Prevention Act prohibits debt collection from a taxpayer's refund. RAL contracts contain anti-consumer mandatory arbitration clauses that deprive taxpayers of their day in court if they have a problem with their RALs.

The Taxpayer Abuse Prevention Act prohibits mandatory arbitration clauses in RAL contracts. The IRS helps increase profits for RAL lenders by sharing taxpayer's personal financial information in the form of the Debt Indicator, which tells tax preparers and RAL lenders when a tax refund offset exists.

The Taxpayer Abuse Prevention Act terminates the Debt Indicator program, ensuring that IRS resources are not used to help the bottom line of RAL lenders.

Isn't this denying EITC taxpayers an option to get their refund money at tax time?

RALs cost an enormous amount for what is essentially a loan of less than two weeks, draining billions for a mostly useless product. Because they are such short term loans, the RAL loan fee translates into effective annualized interest rates of about 40% to over 700%, or 70% to over 1700% if administrative fees are included. If the taxpayer's refund is reduced or denied by the IRS, the taxpayer is on the hook to repay the loan—a tough task for the low-income taxpayers who mostly get RALs.

The EITC is money paid out of the federal Treasury to make sure working families are lifted out of poverty. Other similar government programs have longstanding similar prohibitions against making a loan against those benefits. For example, the Social Security Act, 42 U.S.C. 407(a), prohibits lenders from seizing, garnishing, attaching, taking an assignment in or securing a loan against Social Security benefits. The Taxpayer Abuse Prevention Act prohibition's against RALs secured by the EITC was modeled on this provision of the Social Security Act, with the addition of a prohibition against offsets of EITC benefits.

CHILDREN'S DEFENSE FUND,
Washington, DC, February, 2005.

KEEPING WHAT THEY'VE EARNED: WORKING FAMILIES AND TAX CREDITS

As the height of tax-filing season approaches, Americans are being bombarded with advertisements from commercial tax preparers on high-cost options for getting their taxes prepared. Many of these commercial tax preparers focus on low-income neighborhoods and lure their clients with the promise of ''Fast Money,'' Money Now'' or ''Rapid Refunds.''

Two out of every three people nationwide who claim the Earned Income Tax Credit (EITC) use commercial tax preparers to prepare their returns. These low-income families end up paying high preparation fees and many of them take out high-interest loans against their expected refund. Unfortunately, many of these low- to moderate-income working Americans are unaware of other options—including free tax preparation through Volunteer Income Tax Assistance sites.

Enacted in 1975, the EITC is our nation's largest and most effective anti-poverty program, generating billions of dollars to help

families meet their most basic needs. Research shows families use their refunds to pay bills such as utilities and rent, to purchase basic household commodities and clothing, to cover the costs of tuition, and some even reserve parts of their EITC for savings. In sum, EITC helps low- to moderate-income families make ends meet while stimulating the local economy.

THE FULL VALUE OF THE PROGRAM IS NOT REACHING WORKING FAMILIES

Unfortunately, low-income taxpayers lost over $690 million in loan charges in 2003 and a total of $2.3 billion if the cost of commercial tax preparation is included. These costs can include tax preparation, documentation preparation or application handling fees, electronic filing fees and a Refund Anticipation Loan (RALs). The RALs are loans secured by tax-payer's tax refund, including the EITC.

In middle and upper income communities, consumers have access to loans and credit cards at competitive rates, and branch offices of mainstream banks and savings and loans offer a full array of banking services. Low-income consumers are forced to patronize fringe financial service providers that charge exorbitant rates for personal loans and limited banking services.

RALS TARGET HIGH POVERTY AREAS

Recent research has shown that low-income taxpayers who claim the EITC represent the majority of the marketplace for RALs. The product's popularity varies substantially across the U.S., but the most recent Internal Revenue Service figures indicate that 79 percent of RAL recipients in 2003 had adjusted gross incomes of $35,000 or less. Minority consumers are heavier RAL users. Twenty-eight percent of African Americans and 21 percent of Latino taxpayers told surveyors they received RALs compared with 17 percent of White consumers.

The Children's Defense Fund's review of eight states and the District of Columbia reveals that almost $960 million dollars has been siphoned away from low-income tax payers in these states, because of tax preparation and high interest loan fees.

California lost an estimated $236.5 million.

Minnesota lost and estimated 5.1 million.

Mississippi lost an estimated $54 million.

New York lost an estimated $182 million.

Ohio lost an estimated $82.6 million.

South Carolina lost an estimated $57 million.

Tennessee lost an estimated $57 million.

Texas lost an estimated $251 million.

Washington D.C. lost an estimated $5.8 million.

THE APPEAL OF RALS AND WHAT TAXPAYERS AREN'T TOLD

Many low-income families may feel they have little choice but to take out a RAL. First, many are unlikely to have $100 on hand to pay for tax preparation fees. In setting up the loan, the commercial tax preparers deduct these fees first, relieving the families from the need to find alternative resources. Second, and probably more significantly, RALs enable families to access the amount of money they expect from their refunds within 48 hours, rather than having to wait for the IRS to process their returns. This wait could last 6–8 weeks if the family does not file electronically and does not have a bank account to accept an electronic transfer of the refund. Indeed, many low-income families lack bank accounts. According to the Federal Reserve, one out of four families with incomes less than $25,000 does not have a bank account of any kind.

RECOMMENDATIONS

1. Simplify the rules and process. Working families should be able to complete their own taxes, without having to pay for professional assistance. Federal and state laws, especially those that govern working families income taxes, need to be simplified and federal and state tax credit programs need to be coordinated.

2. Ensure that free tax assistance for EITC families is available, accessible and well-publicized. Very few people know that free tax assistance for low-income families is available at Volunteer Income Tax Assistance sites, Tax Counseling for the Elderly, AARP and other free tax preparation sites in many communities, but very few people know this. The community groups and non-profit organizations that operate many of these sites need help. Different levels of government, employers, foundations, churches and other community groups can all provide financial assistance, make site locations available, donate computers for electronic filing, help recruit volunteers and conduct outreach with potential EITC families. EITC families should also be made aware that there are free or low-cost tax filing websites available that they can access through the IRS and other websites.

3. Strengthen consumer protection and education. There is little regulation of tax preparers even though they are entrusted with personal information and expected to stay abreast of many complex tax laws. The federal and state governments could do more to regulate and monitor the practices of paid preparers as well as the national banks with which they partner to offer RALs. Families need to understand what they can expect of their tax preparer, as well as the drawbacks and hidden costs of RALs. On the federal level, the Taxpayer Abuse Prevention Act (TAPA) legislation introduced by Senators Akaka (D-HI) and Bingaman (D-NM) and Representative Schakowsky (DIL) would prohibit the use of RALs against the EITC.

4. Connect more low-income families with fmancial institutions and increase their financial literacy. Having a tax refund electronically deposited directly into a bank account speeds up the turnaround time significantly, but one out of four families with incomes less than $25,000 does not have a bank account. Recent efforts to partner free tax assistance with financial institutions have been successful.

CHILDREN NEED ADEQUATE FAMILY INCOME IF THEY ARE TO MEET THEIR MOST BASIC NEEDS, FROM DIAPERS TO DOCTORS TO HEALTHY FOOD AND SAFE HOUSING

Whether a child will flounder or flourish can hinge on things that money buys: good quality child care, eyeglasses to read the chalkboard, a little league fee, a musical instrument, or simply the peace of mind that lets parents create a warm and nurturing family life free from worries about eviction or hunger.

Yet almost 13 million children are poor and millions more live in struggling families with incomes just above the official poverty line. Giving children economic security means providing stronger tax credits for low-paid working families and a more reliable safety net when jobs fall short. It also means making more effective use of available programs and ensuring that families have access to the tax credits and food, health, and other benefits that already exist.

The millions of dollars lost by working families to commercial tax preparers is money that could have been used to help provide their children with a safe home, nutritious meals and a good education.

These hardworking families are trying to lift themselves out of poverty but are falling victim to targeted marketing tactics that are taking their hard-earned money. The Children's Defense Fund's efforts to educate and assist families that may otherwise, fall prey to these unconscionable sales tactics can make a difference in the lives of the working poor.

By Mr. SANTORUM (for himself and Mrs. LINCOLN):

S. 327. A bill to amend the Internal Revenue Code of 1986 to expand the tip credit to certain employers and to promote tax compliance; to the Committee on Finance.

Mr. SANTORUM. Mr. President, I would like to introduce, along with my colleague, Senator LINCOLN of Arkansas, the Small Business Tax Equalization and Compliance Act of 2005, which would amend the tax code to expand the tip credit to certain employers and to promote tax compliance.

This bill addresses an unfair aspect of our current tax code that adversely affects tens of thousands of small businesses across the country. Under current law, certain small business owners are required to pay Social Security and Medicare (FICA) taxes on tips their employees earn, despite having no control over or share of the tip earnings. This legislation will allow these small business owners to claim a tax credit against their income taxes for their share of the FICA tax paid on their employees' tips. The Small Business Tax Equalization and Compliance Act would place cosmetology service owners on equal footing with other similarly tip-intensive businesses such as the restaurant and food delivery industries that already benefit from a similar tax credit.

I ask unanimous consent that the text of the bill be printed in the RECORD, and am hopeful my colleagues will join me in support of this legislation.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 327

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Small Business Tax Equalization and Compliance Act of 2005''.

SEC. 2. EXPANSION OF CREDIT FOR PORTION OF SOCIAL SECURITY TAXES PAID WITH RESPECT TO EMPLOYEE TIPS.

(a) EXPANSION OF CREDIT TO OTHER LINES OF BUSINESS.—Paragraph (2) of section 45B(b) of the Internal Revenue Code of 1986 is amended to read as follows:

''(2) APPLICATION ONLY TO CERTAIN LINES OF BUSINESS.—In applying paragraph (1), there shall be taken into account only tips received from customers or clients in connection with—

''(A) the providing, delivering, or serving of food or beverages for consumption if the tipping of employees delivering or serving food or beverages by customers is customary, or

''(B) the providing of any cosmetology service for customers or clients at a facility licensed to provide such service if the tipping of employees providing such service is customary.''.

(b) DEFINITION OF COSMETOLOGY SERVICE.—Section 45B of such Code is amended by redesignating subsections (c) and (d) as subsections (d) and (e), respectively, and by inserting after subsection (b) the following new subsection:

''(c) COSMETOLOGY SERVICE.—For purposes of this section, the term 'cosmetology service' means—

''(1) hairdressing,

''(2) haircutting,

''(3) manicures and pedicures,

''(4) body waxing, facials, mud packs, wraps, and other similar skin treatments, and

''(5) any other beauty related service provided at a facility at which a majority of the services provided (as determined on the basis of gross revenue) are described in paragraphs (1) through (4).''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to tips received for services performed after December 31, 2004.

SEC. 3. INFORMATION REPORTING AND TAXPAYER EDUCATION FOR PROVIDERS OF COSMETOLOGY SERVICES.

(a) IN GENERAL.—Subpart B of part III of subchapter A of chapter 61 of the Internal Revenue Code of 1986 is amended by inserting after section 6050T the following new section:

''SEC. 6050U. RETURNS RELATING TO COSMETOLOGY SERVICES AND INFORMATION TO BE PROVIDED TO COSMETOLOGISTS.

''(a) IN GENERAL.—Every person (referred to in this section as a 'reporting person') who—

''(1) employs 1 or more cosmetologists to provide any cosmetology service,

''(2) rents a chair to 1 or more cosmetologists to provide any cosmetology service on at least 5 calendar days during a calendar year, or

''(3) in connection with its trade or business or rental activity, otherwise receives compensation from, or pays compensation to, 1 or more cosmetologists for the right to provide cosmetology services to, or for cosmetology services provided to, third-party patrons, shall comply with the return requirements of subsection (b) and the taxpayer education requirements of subsection (c).

''(b) RETURN REQUIREMENTS.—The return requirements of this subsection are met by a reporting person if the requirements of each of the following paragraphs applicable to such person are met.

''(1) EMPLOYEES.—In the case of a reporting person who employs 1 or more cosmetologists to provide cosmetology services, the requirements of this paragraph are met if such person meets the requirements of sections 6051 (relating to receipts for employees) and 6053(b) (relating to tip reporting) with respect to each such employee.

''(2) INDEPENDENT CONTRACTORS.—In the case of a reporting person who pays compensation to 1 or more cosmetologists (other than as employees) for cosmetology services provided to third-party patrons, the requirements of this paragraph are met if such person meets the applicable requirements of section 6041 (relating to returns filed by persons making payments of $600 or more in the course of a trade or business), section 6041A (relating to returns to be filed by service-recipients who pay more than $600 in a calendar year for services from a service provider), and each other provision of this subpart that may be applicable to such compensation.

''(3) CHAIR RENTERS.—

''(A) IN GENERAL.—In the case of a reporting person who receives rent or other fees or compensation from 1 or more cosmetologists for use of a chair or for rights to provide any cosmetology service at a salon or other similar facility for more than 5 days in a calendar year, the requirements of this paragraph are met if such person—

''(i) makes a return, according to the forms or regulations prescribed by the Secretary, setting forth the name, address, and TIN of each such cosmetologist and the amount received from each such cosmetologist, and

''(ii) furnishes to each cosmetologist whose name is required to be set forth on such return a written statement showing—

''(I) the name, address, and phone number of the information contact of the reporting person,

''(II) the amount received from such cosmetologist, and

''(III) a statement informing such cosmetologist that (as required by this section), the reporting person has advised the Internal Revenue Service that the cosmetologist provided cosmetology services during the calendar year to which the statement relates.

''(B) METHOD AND TIME FOR PROVIDING STATEMENT.—The written statement required by clause (ii) of subparagraph (A) shall be furnished (either in person or by first-class mail which includes adequate notice that the statement or information is enclosed) to the person on or before January 31 of the year following the calendar year for which the return under clause (i) of subparagraph (A) is to be made.

''(c) TAXPAYER EDUCATION REQUIREMENTS.—In the case of a reporting person who is required to provide a statement pursuant to subsection (b), the requirements of this subsection are met if such person provides to each such cosmetologist annually a publication, as designated by the Secretary, describing—

''(1) in the case of an employee, the tax and tip reporting obligations of employees, and

''(2) in the case of a cosmetologist who is not an employee of the reporting person, the tax obligations of independent contractors or proprietorships.

The publications shall be furnished either in person or by first-class mail which includes adequate notice that the publication is enclosed.

''(d) DEFINITIONS.—For purposes of this section—

''(1) COSMETOLOGIST.—

''(A) IN GENERAL.—The term 'cosmetologist' means an individual who provides any cosmetology service.

''(B) ANTI-AVOIDANCE RULE.—The Secretary may by regulation or ruling expand the term 'cosmetologist' to include any entity or arrangement if the Secretary determines that entities are being formed to circumvent the reporting requirements of this section.

''(2) COSMETOLOGY SERVICE.—The term 'cosmetology service' has the meaning given to such term by section 45B(c).

''(3) CHAIR.—The term 'chair' includes a chair, booth, or other furniture or equipment from which an individual provides a cosmetology service (determined without regard to whether the cosmetologist is entitled to use a specific chair, booth, or other similar furniture or equipment or has an exclusive right to use any such chair, booth, or other similar furniture or equipment).

''(e) EXCEPTIONS FOR CERTAIN EMPLOYEES.—Subsection (c) shall not apply to a reporting person with respect to an employee who is employed in a capacity for which tipping (or sharing tips) is not customary.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 6724(d)(1)(B) of such Code (relating to the definition of information returns) is amended by redesignating clauses (xiii) through (xviii) as clauses (xiv) through (xix), respectively and by inserting after clause (xii) the following new clause:

''(xiii) section 6050U(a) (relating to returns by cosmetology service providers).''.

(2) Section 6724(d)(2) of such Code is amended—

(A) by striking ''or'' at the end of subparagraph (AA),

(B) by striking the period at the end of subparagraph (BB) and inserting '', or'', and

(C) by inserting after subparagraph (BB) the following new subparagraph:

''(CC) subsections (b)(3)(A)(ii) and (c) of section 6050U (relating to cosmetology service providers) even if the recipient is not a payee.''.

(3) The table of sections for subpart B of part III of subchapter A of chapter 61 of the Internal Revenue Code of 1986 is amended by adding after section 6050T the following new item:

''Sec. 6050U. Returns relating to cosmetology services and information to be provided to cosmetologists.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to calendar years after 2004.

By Mr. ROCKEFELLER (for himself and Mr. LEAHY):

S. 329. A bill to amend title 11, United States Code, to increase the amount of unsecured claims for salaries and wages given priority in bankruptcy, to provide for cash payments to retirees to compensate for lost health insurance benefits resulting from the bankruptcy of their former employer, and for other purposes; to the Committee on the Judiciary.

Mr. ROCKEFELLER. Mr. President, over the last several years as the economy came down from the high of the 1990s, we have seen how devastating it can be for workers when their companies declare bankruptcy. From the enormous Enron bankruptcy at the end of 2001 to the bankruptcies of Wheeling-Pitt and then Weirton Steel in my own home State, every bankruptcy has brought heartache for workers who had dedicated themselves to their employers. In many cases, employees and retirees have very limited ability to recover the wages, severance, or benefits they are due when their companies seek protection from creditors.

Workers deserve better. So today I am introducing the Bankruptcy Fairness Act to strengthen workers' rights in bankruptcy and to provide greater authority to bankruptcy courts to ensure a fair distribution of assets. I am very pleased that Senator LEAHY, the distinguished ranking Democrat on the Senate Judiciary Committee is an original cosponsor of this bill.

Specifically, the bill will do three things. It will ensure that retirees whose promised health insurance is taken away receive at least some compensation for their lost benefits. Second, my legislation would allow employees to recover more of the backpay or other compensation that is owed to them at the time of the bankruptcy. And lastly, it would provide bankruptcy courts the authority to recover company assets in cases where company managers flagrantly paid excessive compensation to favored employees just before declaring bankruptcy.

I first introduced this legislation in the 108th Congress. I am reintroducing

it because this issue is as important in West Virginia today as it has ever been. I am hopeful that as Congress considers any changes to bankruptcy law we will debate how we can better protect workers whose companies file for bankruptcy. I do not pretend to have all the answers. But I do know that we must do a better job of easing the burden that bankruptcy imposes on employees and retirees. And I believe that we can do so in creative ways that do not make it more difficult for companies to successfully reorganize and emerge from bankruptcy. I look forward to the ideas and suggestions of my colleagues.

In the simplest economic terms, employees sell their labor to their companies. They toil away in offices, plants, factories, mills, and mines, because they are promised that at the end of the day they will receive certain compensation. One of the most important types of compensation that workers earn is the right to enjoy certain benefits when they retire. Pensions, life insurance, or health care coverage are earned by workers in addition to their weekly paychecks. Yet, sadly we have seen many companies in the last few years abandon these promises when they declare bankruptcy.

More and more we see companies taking the easy road to profitability by abandoning commitments that they made to workers. For retirees who have planned for their golden years based on the benefits they have earned, losing health insurance can be a devastating blow. Retirees must have the right to reasonable compensation if the company seeks to break its promise to provide health insurance. Under current law, these retirees receive what is called a general unsecured claim for the value of the benefits they lost. As any creditor will tell you, a general unsecured claim is essentially worthless in most bankruptcies. It means you are at the end of the line, and there are not enough assets to go around. This law allows companies to essentially rescind compensation that retirees have earned with virtually no cost to the company. Of course that is a great deal for the company, but it is spectacularly unfair to the retirees.

Recognizing that so-called legacy costs are often an impossible burden for a company that is trying to emerge from bankruptcy, my legislation would still allow companies in some circumstances to alter the health coverage offered to retirees. However, it would require that the company pay a minimum level of compensation to retirees. Under this bill, each retiree would be entitled to a payment equal to the cost of purchasing comparable health insurance for a period of 18 months. Of course, 18 months of health insurance coverage is a lot less than many of these retirees are losing, but it can ease the transition as retirees make alternative plans, and it will discourage companies from thinking that terminating retiree health coverage is an easy solution. The retirees would still be entitled to a general unsecured claim for the value of the benefits lost in excess of this one time payment. This change would ensure that retirees, while still not being made whole on lost benefits, will at least receive some compensation for the broken promises.

Many active workers, too, have a difficult time recovering what is owed to them by their employer when the company files bankruptcy. Under current law, employees are entitled to a priority claim of up to $4,925. But that figure is usually not enough to cover the back-wages, vacation time, severance pay, or benefit payments that the employees are owed for work done prior to the bankruptcy. Congress needs to update the amount of the priority claim to ensure that more workers are able to receive what is rightfully theirs. The Bankruptcy Fairness Act would establish a priority claim for the first $15,000 of compensation owed to an employee.

In most cases, employees have been working their hardest to help the company avoid the nightmare of bankruptcy, only to find that they will not be compensated for their services as promised. As we saw so clearly with the Enron case, employees are often left holding the bag when their company declares bankruptcy. In that case, employees were owed an average of $35,000 in back-wages, severance, and other promised compensation. They deserved to recover more than a mere $4,925 of what was owed them. Let me be clear, this bill does not establish any new obligation for a company to pay severance or other compensation to employees caught up in a company's bankruptcy. It merely ensures that employees can recover more of what is already owed to them through the bankruptcy process.

I understand that many creditors or investors are not able to recover what is rightfully owed to them in bankruptcy, but employees deserve protection that recognizes the unique nature of their dependence on their employer. Any smart investor diversifies his or her portfolio so that a bankruptcy at one company does not bankrupt the investor. Likewise, suppliers and creditors that do business with a company typically have many other clients. This is not the case with workers. They cannot diversify away the risk of working for a bankrupt company, and the financial hardship a bankruptcy brings is more devastating to the average worker than the average creditor or supplier.

Now, I know that some of my colleagues listening to this may be worrying that this legislation is insensitive to the needs of companies that are trying to reorganize in order to emerge from bankruptcy and go forward as successful businesses. I am fully aware that sometimes, too often in the real world, the bankruptcy process can help companies stay open and maintain jobs by restructuring obligations to creditors. Too many companies in West Virginia have had to go through the painful process of Chapter 11 reorganization. I completely understand the need to keep the factories open. And I have always worked side by side with companies to help them recover.

I will continue that important work, and I have included a provision in this bill to help bankrupt companies that are struggling to survive to recover assets that have been pilfered from the corporate coffers. In too many cases, company executives reward themselves even as their companies careen toward bankruptcy. The most egregious recent example is at Enron in 2001. In the days and weeks leading up to the bankruptcy filing, executives granted large bonuses to themselves and their favored employees. Millions of dollars were paid to a select group of employees just before the company declared bankruptcy. It is unconscionable that executives would grant themselves undeserved bonuses and then weeks later claim that the company did not have the resources to pay its rank and file employees.

My legislation provides bankruptcy courts greater authority to recover excessive compensation that was paid just prior to the bankruptcy filing. If the court finds that compensation was out of the ordinary course of business or was unjust enrichment, the court can recover those assets for the bankrupt company, ensuring that more creditors, employees, and retirees can receive what is rightfully owed to them by the company.

The reforms I have outlined are modest. They will not take the sting out of bankruptcy. By definition a bankruptcy is a failure, and it is painful for the company's employees, retirees, and business partners. But the Bankruptcy Fairness Act I am introducing today would make progress toward ensuring that bankruptcies are more fair to the workers who gave their time and energy and sweat to the company in exchange for certain promised compensation. And by helping a company recover assets that should not have been paid out as undeserved bonuses just before bankruptcy the bill ensures that more of a company's assets are paid to the employees, retirees, and creditors who are rightfully owed.

It is my hope that this legislation will receive serious consideration from my colleagues, and that this can open an important debate about how workers and retirees can be better protected from the ugly side of prolonged economic downturns. I ask unanimous consent that the text of the legislation be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 329

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Bankruptcy Fairness Act''.

SEC. 2. FAIR TREATMENT OF COMPENSATION IN BANKRUPTCY.

(a) INCREASED PRIORITY CLAIM AMOUNT FOR EMPLOYEE WAGES AND BENEFITS.—Section 507(a) of title 11, United States Code, is amended—

(1) in paragraph (3)—

(A) by striking ''$4,925'' and inserting ''$15,000''; and

(B) by striking ''within 90 days''; and

(2) in paragraph (4)(B)(i), by striking ''$4,925'' and inserting ''$15,000''.

(b) RECOVERY OF EXCESSIVE COMPENSATION.—Section 547 of title 11, United States Code, is amended by adding at the end the following:

''(h) The court, on motion of a party of interest, may avoid any transfer of compensation made to a present or former employee, officer, or member of the board of directors of the debtor on or within 90 days before the date of the filing of the petition that the court finds, after notice and a hearing, to be—

''(1) out of the ordinary course of business; or

''(2) unjust enrichment.''.

SEC. 3. PAYMENT OF INSURANCE BENEFITS OF RETIREES.

(a) IN GENERAL.—Section 1114(j) of title 11, United States Code, is amended to read as follows:

''(j)(1) No claim for retiree benefits shall be limited by section 502(b)(7).

''(2)(A) Each retiree whose benefits are modified pursuant to subsection (e)(1) or (g) shall have a claim in an amount equal to the value of the benefits lost as a result of such modification. Such claim shall be reduced by the amount paid by the debtor under subparagraph (B).

''(B)(i) In accordance with section 1129(a)(13)(B), the debtor shall pay the retiree with a claim under subparagraph (A) an amount equal to the cost of 18 months of premiums on behalf of the retiree and the dependents of the retiree under section 602(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1162(3)), which amount shall not exceed the amount of the claim under subparagraph (A).

''(ii) If a retiree under clause (i) is not eligible for continuation coverage (as defined in section 602 of the Employee Retirement Income Security Act of 1974), the Secretary of Labor shall determine the amount to be paid by the debtor to the retiree based on the 18-month cost of a comparable health insurance plan.

''(C) Any amount of the claim under subparagraph (A) that is not paid under subparagraph (B) shall be a general unsecured claim.''.

(b) CONFIRMATION OF PLAN.—Section 1129(a)(13) of title 11, United States Code, is amended to read as follows:

''(13) The plan provides—

''(A) for the continuation after its effective date of the payment of all retiree benefits (as defined in section 1114), at the level established pursuant to subsection (e)(1) or (g) of section 1114, at any time before the confirmation of the plan, for the duration of the period the debtor has obligated itself to provide such benefits; and

''(B) that the holder of a claim under section 1114(j)(2)(A) shall receive from the debtor, on the effective date of the plan, cash equal to the amount calculated under section 1114(j)(2)(B).''.

(c) RULEMAKING.—The Secretary of Labor shall promulgate rules and regulations to carry out the amendments made by this section.

By Mr. ENSIGN (for himself, Mr. REID, Mr. BURNS, Mrs. FEINSTEIN, Mr. NELSON of Florida, Mr. CHAFEE, Mr. SUNUNU, Mr. DURBIN, and Mr. DAYTON):

S. 330. A bill to amend the Help America Vote Act of 2002 to require a voter-verified permanent record or hardcopy under title III of such Act, and for other purposes; to the Committee on Rules and Administration.

Mr. ENSIGN. Mr. President, in the November 2004 elections, Nevadans entered a new frontier for casting their votes. We became the first state in the nation to require that voter-verified paper audit trail printers be used with touch-screen voting machines.

Not only did our election go off without a hitch, but voters across Nevada left the polls with the knowledge that their vote would be counted and that their vote would be counted accurately.

I understand better than most the importance of the integrity of the ballot box. I was at the mercy of a paperless-machine election in my 1998 race for the U.S. Senate. When the votes were tallied with a difference of only a few hundred, I asked for a recount in Clark County, the only county at the time using electronic voting machines. The result of the recount was identical to the first count. That is because there was nothing to recount. After rerunning a computer program, the computer predictably produced the same exact tally.

I conceded that race and was elected to Nevada's other Senate seat in 2000. But that experience made me realize the importance of ensuring Americans that their votes will count—it is absolutely fundamental to our democracy.

That is why I led the fight for voter verification paper trails in the Help America Vote Act (HAVA) that President Bush signed into law in 2002. A voter-verified paper trail would allow voters to review a physical printout of their ballot and correct any errors before leaving the voting booth. This printout would be preserved at the polling place for use in any recounts. This is exactly what Nevadans experienced when they voted in November.

Unfortunately, the language that is contained in HAVA has not resolved this issue for most other states. Now, I am working to ensure voting integrity across the country. By introducing the Voting Integrity and Verification Act, I want to ensure that HAVA is clear—voters must be assured that their votes will be accurate and will be counted properly. A paper trail provides just such an assurance.

Technology has transformed the way we do many things—including voting. But we cannot simply sit on the sidelines and assume that our democracy will withstand such changes. We recently witnessed the birth of democracy in Afghanistan and Iraq and watched as citizens risked their lives to cast their votes. Our continued work to ensure that each vote counts here in the United States underscores the idea that we must always be vigilant in protecting democracy—whether it is brand new or more than 200 years old. The Voting Integrity and Verification Act protects democracy by protecting the sanctity of our vote.

By Mr. DOMENICI (for himself and Mr. BINGAMAN):

S. 332. A bill to prohibit the retirement of F–117 Nighthawk stealth attack aircraft during fiscal year 2006; to the Committee on Armed Services.

Mr. DOMENICI. Mr. President, I rise to introduce a bill prohibiting retirement of F–117 stealth fighter aircraft during fiscal year 2006. I am also pleased my colleague, Senator BINGAMAN, has joined me as a cosponsor. The Department of Defense budget proposed for next year reduces operations and maintenance funds for the stealth fighter. As a result, ten aircraft would be retired. I believe this would be detrimental to our national security and so I offer a very simple bill to maintain the current F–117 force structure.

The mission of the stealth fighter is to strike highly important, highly defended enemy targets. Pilots from Holloman Air Force Base, NM have flown thousands of successful sorties while evading heavy air defenses because of the F–117's stealth capability. As I think most know, F–117s played a key role during operations in Serbia, in Operation Iraqi Freedom and in other dangerous theaters around the world. The F–117 has been this nation's preeminent first strike platform. And I would submit, that retiring nearly 20 percent of our proven stealth fighter fleet before new planes such as the F–22 and the Joint Strike Fighter enter the force is not prudent.

Last year, a similar budget request was made to reduce the F–117 fleet. I recommended that the Department of Defense delay such a decision until new stealth platforms enter the fleet. Both the Armed Services committee and the Defense Appropriations subcommittee agreed with my assessment and included language in their bills prohibiting the retirement. For fiscal year 2006 my goal remains the same: to retain the vital first-strike capability this Nation has come to rely upon for the immediate future.

I recognize that this is a time when our military forces are transforming to a different kind of force—one that is more agile. I also recognize that this will require new kinds of platforms and different force structures. But at a time when the world presents a number of challenges that may require use of stealth capability, I am committed to maintaining the current configuration of the F–117 fleet and I urge my colleagues to support this bill.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 332

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. PROHIBITION ON RETIREMENT OF F–117 NIGHTHAWK STEALTH ATTACK AIRCRAFT.

No F–117 Nighthawk stealth attack aircraft in use by the Air Force during fiscal year 2005 may be retired during fiscal year 2006.

By Mr. DORGAN (for himself, Ms. SNOWE, Mr. GRASSLEY, Mr. KENNEDY, Mr. MCCAIN, Ms. STABENOW, Mr. CHAFEE, Mr. JEFFORDS, Mr. LOTT, Mr. DAYTON, Mrs. CLINTON, Mr. BINGAMAN, Mrs. BOXER, Mr. CONRAD, Mr. DURBIN, Mr. FEINGOLD, Mrs. FEINSTEIN, Mr. INOUYE, Mr. JOHNSON, Mr. KOHL, Mr. LEAHY, Mr. LEVIN, Mr. NELSON of Florida, Mr. OBAMA, Mr. PRYOR, Mr. SALAZAR, Mr. SARBANES, Mr. SCHUMER, and Ms. COLLINS):

S. 334. A bill to amend the Federal Food, Drug, and Cosmetic Act with respect to the importation of prescription drugs, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. DORGAN. Mr. President, today, I am introducing my bipartisan prescription drug importation legislation, the Pharmaceutical Market Access and Drug Safety Act, along with Senators SNOWE, GRASSLEY, KENNEDY, MCCAIN, STABENOW, JEFFORDS and many others. In all, the bill has 28 cosponsors, and I expect we will add more cosponsors in the coming weeks and months.

I am particularly pleased that Finance Committee Chairman CHARLES GRASSLEY has joined forces with us on this year's bill. Chairman GRASSLEY has made a significant contribution to the drug importation debate and has provided invaluable assistance in ensuring that our bill complies with our country's trade obligations. Chairman GRASSLEY's support also helps to demonstrate the growing momentum in the Senate for a vote on our bipartisan drug importation legislation.

I am also glad that, in addition to being tri-partisan, this year's bill is also bicameral. Congresswoman JOANN EMERSON and Congressman SHERROD BROWN are introducing the companion to my bill in the House of Representatives today.

This is an issue whose time has come. By now, it is well-documented that American consumers pay by far the highest prices in the world for prescription medicines, and our citizens are desperate for relief. Earlier this month, we learned that prices on 31 of the top-50 bestselling drugs went up during the last two-month period. For instance, the price of the top-selling drug Lipitor has gone up 5 percent—double the inflation rate for all of 2004—in just the two months since November, 2004. Lipitor costs the American consumer nearly twice as much per pill as the Canadian consumer.

These recent price increases come at the expense of American consumers—especially those seniors and uninsured Americans who do not have health insurance coverage for prescription drugs. The Pharmaceutical Market Access and Drug Safety Act is a step that the Congress can take to put downward pressure on drug prices in our country. By some estimates, U.S. consumers could save up to $38 billion if they could purchase prescription medicines at the Canadian prices.

This year's bill is substantially similar to the bill that Senator SNOWE and I introduced last year but it has been refined in response to technical assistance we have received from various stakeholders. We have thoroughly and pro-actively addressed all of the safety issues that some have raised with respect to drug importation. The fact is that a system of drug importation, called parallel trade, has flourished with no safety problems within the European Union for the last two decades. I am convinced that if the Europeans can safely trade pharmaceuticals within Europe, the United States can safely do so, and our bill gives the Food and Drug Administration the authority and resources it needs to oversee such a system.

We simply cannot continue on our current course of inaction, and I want to put my colleagues on notice that I am determined to get a vote on this legislation this year on the Senate floor. The agreement that Senator SNOWE and I reached earlier this month with Majority Leader FRIST and new Health, Education, Labor, and Pensions Committee Chairman ENZI to hold a hearing specifically on the Dorgan-Snowe bill is a step in the right direction.

I am convinced that if the full Senate is given the opportunity to vote on our bill, it will pass with overwhelming bipartisan support. I look forward to continuing to work with my colleagues to get this legislation passed by Congress and sent to the President for his signature.

By Mr. SARBANES (for himself, Mr. WARNER, Mr. ALLEN, and Ms. MIKULSKI):

S. 336. A bill to direct the Secretary of the Interior to carry out a study of the feasibility of designating the Captain John Smith Chesapeake National Historic Watertrail as a national historic trail; to the Committee on Energy and Natural Resources.

Mr. SARBANES. Mr. President, today I am introducing legislation to initiate a study of the feasibility of designating the route of Captain John Smith's exploration of the Chesapeake Bay and its tributaries as a National Historic Trail. Joining me in sponsoring this legislation are my colleagues Senators WARNER, ALLEN and MIKULSKI.

Our system of National Historic Trails, NHTs, commemorate major routes of historic travel and mark major events which shaped American history. To date, 13 National Historic Trails have been established in the National Park Service including the Lewis and Clark, the Pony Express, Selma to Montgomery, and Trail of Tears National Historic Trails. To be designated as a National Historic Trail, a trail must meet three basic criteria: it must be nationally significant, have a documented route through maps or journals, and provide for recreational opportunities. In my judgment, the proposed Captain John Smith Chesapeake National Historic Watertrail meets all three criteria.

Captain John Smith was one of America's earliest explorers. His role in the founding of Jamestown, VA—the first permanent English settlement in North America—and in exploring the Chesapeake Bay region during the years 1607 to 1609 marks a defining period in the history of our Nation. His contemporaries and historians alike credit Smith's strong leadership with ensuring the survival of the fledgling colony and laying the foundation for the future establishment of our nation.

With a dozen men in a 30-foot open boat, Smith's expeditions in search of food for the new colony and the fabled Northwest Passage took him nearly 3,000 miles around the Chesapeake Bay and its tributaries from the Virginia capes to the mouth of the Susquehanna. On his voyages and as President of the Jamestown Colony, Captain Smith became the first point of contact for scores of Native American leaders from around the Bay region. His relationship with Pocahontas is now an important part of American folklore. Smith's notes describing the indigenous people he met and the Chesapeake Bay ecosystem are still widely studied by historians, environmental scientists, and anthropologists.

The remarkably accurate maps and charts that Smith made of his voyages into the Chesapeake Bay and its tributaries served as the definitive map of the region for nearly a century. His voyages, as chronicled in his journals, ignited the imagination of the Old World, and helped launch an era of adventure and discovery in the New World. Hundreds, and then thousands of people aspired to settle in what Smith described as one of '' the most pleasant places known, for large and pleasant navigable rivers, heaven and earth never agreed better to frame a place for man's habitation.'' Even today, his vivid descriptions of the Bay's abundance still serve as a benchmark for the health and productivity of the Bay.

With the 400th anniversary of the founding of Jamestown quickly approaching, the designation of this route as a national historic trail would be a tremendous way to celebrate an important part of our nation's story and serve as a reminder of John Smith's role in establishing the colony and opening the way for later settlements in the New World. It would also give recognition to the Native American settlements, culture and natural history of the 17th century Chesapeake. Similar in historic importance to the Lewis and Clark National Trail,

this new historic watertrail will inspire generations of Americans and visitors to follow Smith's journeys, to learn about the roots of our nation and to better understand the contributions of the Native Americans who lived within the Bay region.

Equally important, the Captain John Smith Chesapeake National Watertrail can serve as a national outdoor resource by providing rich opportunities for education, recreation, and heritage tourism not only for more than 16 million Americans living in the Bay's watershed, but for visitors to this area. The water trail would be the first National Watertrail established in the United States and would allow voyagers in small boats, cruising boats, kayaks and canoes to travel from the distant headwaters to the open Bay—an accomplishment that would inspire today's explorers and would generate national and international attention and participation. The Trail would complement the Chesapeake Bay Gateways and Watertrails Initiative and help highlight the Bay's remarkable maritime history, its unique watermen and their culture, the diversity of its peoples, its historical settlements and our current efforts to restore and sustain the world's most productive estuary.

This legislation enjoys strong bipartisan support in the Congress and in the States through which the trail passes. The legislation has been endorsed by the Governors of Virginia, Pennsylvania, Delaware and Maryland. The measure is also strongly supported by The Conservation Fund, Izaak Walton League, the Chesapeake Bay Foundation and the Chesapeake Bay Commission. I ask unanimous consent that letters from the latter two organizations expressing support for the legislation be printed in the RECORD. I want to commend Pat Noonan, Chairman Emeritus of The Conservation Fund, for his vision in conceiving this trail and urge that the legislation be quickly enacted.

As John Smith wrote four centuries ago and as many Americans today agree, ''no place is more convenient for pleasure, profit and man's sustenance'' than the Chesapeake Bay.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

CHESAPEAKE BAY FOUNDATION,
Annapolis, MD, February 3, 2005.

Hon. PAUL S. SARBANES,
Hart Senate Office Building,
U.S. Senate, Washington, DC.
Hon. JOHN W. WARNER
Russell Senate Office Building,
U.S. Senate, Washington, DC.

DEAR SENATOR SARBANES AND SENATOR WARNER: John Smith's 1607–9 exploration of the Chesapeake was a monumental and historic achievement, shaping the boundaries, character and future of America. His courageous crew traveled almost 3,000 miles along the Chesapeake exploring the rivers and making contact with American Indian tribes from what today is known as Maryland, Virginia, Washington D.C., Pennsylvania, and Delaware.

In honor of the 400th anniversary of the founding of Jamestown in 1607 and the voyages of exploration in the Chesapeake Bay, the Chesapeake Bay Foundation heartily supports the establishment of the Capt. John Smith Chesapeake National Historic Watertrail. We also see the Trail as a vital complement to a strong Chesapeake Bay Gateways Network and believe that valuable synergy can result from the combination.

Accordingly, we wish to express our support for the bipartisan legislation you are introducing to authorize the National Park Service to study the national significance of Smith's voyages of exploration and the feasibility of estabIihing a watertrail to commemorate the voyage.

We believe that the Capt. John Smith Chesapeake National Historic Watertrail would provide invaluable assistance in meeting the goals of the Chesapeake 2000 Agreement, our blueprint for restoring and sustaining the Bay's ecosystem, which has been badly damaged over the past 400 years by the heavy footprints of our large and still-growing presence in its watershed.

By focusing national attention upon the inherent beauty and abundance of the Bay and its rich cultural and historic values, America's first national watertrail would educate and inspire visitors to explore, restore, and protect this unique resource. The watertrail would provide exceptional interpretation and stewardship opportunities, promote habitat restoration and protection, and provide unparalleled recreational and eco-heritage experiences—all in a cost-efficient and low-impact manner.

Involving Communities, non-governmental organizations public agencies, businesses, and private landowners in establishing the Capt. John Smith Chesapeake National Historic Watertrail would demonstrate a new model for public-private partnerships that will form the basis of how we care for our national treasures in the 21st century.

Nearly 400 years ago Smith sailed the Chesapeake and saw the promise of a nation built on exploration, discovery and partnership. America's first national watertrail will celebrate the waters that once captured America's imagination and instill awe and the, spirit of discovery in future explorers, while it motivates them to take up active roles in restoring its health.

Your support of the study is critical to recognize this magnificent national resource.

Respectfully,

WILLIAM C. BAKER,
President.

CHESAPEAKE BAY COMMISSION,
Annapolis, MD, February 1, 2005.

Hon. PAUL S. SARBANES,
Hart Senate Office Building,
U.S. Senate, Washington, DC.
Hon. JOHN W. WARNER,
Russell Senate Office Building,
U.S. Senate, Washington, DC.

DEAR SENATOR SARBANES AND SENATOR WARNER: John Smith's 1607–9 exploration of the Chesapeake was a monumental historic achievement, shaping the boundaries, character and future of America. His courageous crew traveled almost three thousand miles along the Chesapeake exploring the rivers and making contact with American Indian tribes from what today is known as Maryland, Virginia, Washington D.C., Pennsylvania and Delaware.

In honor of the 400th anniversary of the founding of Jamestown in 1607 and the voyages of exploration in the Chesapeake Bay, we support the establishment of the Capt. John Smith Chesapeake National Water Trail. The Trail would be a vital complement to the existing Chesapeake Bay Gateways Network.

Accordingly, we wish to express our support for the bipartisan legislation you are introducing to authorize the National Park Service to study the national significance of Smith's voyages of exploration and the feasibility of establishing a water trail to commemorate the voyages.

We believe that the Capt. John Smith Chesapeake National Water Trail would provide invaluable assistance in meeting the goals of the Chesapeake 2000 Agreement, our blueprint for restoring and sustaining the bay's ecosystem.

By focusing national attention upon the inherent beauty and abundance of the Bay and its rich cultural and historic values, America's first national water trail would educate and inspire visitors to explore and protect this unique resource. The trail would provide exceptional interpretation and stewardship opportunities, promote habitat restoration and protection and provide unparalleled recreational and eco-heritage experiences—all in a cost-efficient and low-impact manner.

Involving communities, non-governmental organization, public agencies, business and private landowners in establishing the Water Trail would demonstrate a new model for public-private partnerships that will form the basis of how we care for our national treasures in the 21st century.

Nearly 400 years ago Smith sailed the Chesapeake and saw the promise of a nation built on exploration, discovery and partnership. America's first national water trail will celebrate the waters that once captured America's imagination and instill awe and the spirit of discovery in future explorers.

Your support of the study is critical to recognize this magnificent national resource.

Respectfully,

Senator MIKE WAUGH,
Chairman.

Mr. WARNER. Mr. President, come 2007, Virginia, along with the rest of our great Nation, will celebrate the 400th anniversary of the historic founding of Jamestown, the first permanent English settlement in the New World. At this site, back in 1607, an adventurous band of Englishmen, led by Captain John Smith, pitched down their stakes on the shores of the Chesapeake Bay, tired from a long journey across the blue ocean, but full of hope for the possibilities that lay ahead. And although they primarily came in search of economic gain, they brought with them many of the principles that were integral to the formation of our American Democracy. Free enterprise, the entrepreneurial spirit, and respect for the principles of representative government and the rights of man would guide these settlers through the trials and tribulations of those tough, early years.

As we Virginians know, nobody was more influential in this founding endeavor, than their leader: Captain John Smith. Captain Smith was not just the man famously saved from death by Pocahontas, and he was more than the mere commander of a small group of pioneers. John Smith, as Virginians learn at a young age, was the first ambassador to the native peoples of the Chesapeake, exchanging cultural customs, trading goods necessary for the fledgling colonists survival. John Smith was also the first English explorer of the many creeks and rivers

that populate the Maryland and Virginia of today. From 1607 to 1609, Captain Smith plied the briny Bay waters, recording history and surveying the land, even this patch of Earth where our Nation's Capitol stands today. In honor of Captain Smith's historic 3,000 mile journey through the choppy Chesapeake's main stem and tributaries, I rise today, joined by Senator SARBANES and my colleagues from the Bay States, to propose a bill authorizing the study of the feasibility of designating the Captain John Smith Chesapeake National Historic Watertrail.

What would this trail accomplish? What would be its purpose? Outside of the obvious tourism it would bring to the region, and besides the fact that its creation would complement the existing Chesapeake Gateways Network, the Watertrail would educate Americans on the perils of our first English settlers, on their interaction with the numerous Native tribes, on the voyages they undertook to better understand the New World they had come to inhabit. First hand, students and seniors, parents and children, would be able to retrace the paddle strokes and footsteps of Captain John Smith, to see what he saw, to learn what he learned, to know what he meant when he wrote in his diary that ''oysters lay thick as stones'' and fish could be caught ''with frying pan(s).''

Ultimately, this trail would allow for a deeper appreciation for the Chesapeake, for a better understanding of the settlers hardships, and for the distinct cultures, English and Indian, that came to pass, in that historic era, at this historic place. Today I rise to celebrate Captain Smith's foresight, to celebrate the founding steps of America, and to celebrate the bounty of the Bay. I urge my colleagues to join me in supporting this feasibility study for the Captain John Smith Chesapeake National Historic Watertrail.

By Mr. SMITH (for himself, Mr. BINGAMAN, Ms. SNOWE, Mr. JEFFORDS, Mr. SANTORUM, Mr. KERRY, Mr. DEWINE, Mr. DURBIN, Mr. CHAFEE, Mrs. LINCOLN, Ms. COLLINS, Mr. NELSON of Nebraska, Mr. VOINOVICH, Mr. CORZINE, and Mr. COLEMAN):

S. 338. A bill to provide for the establishment of a Bipartisan Commission on Medicaid; to the Committee on Finance.

Mr. SMITH. Mr. President, first, let me thank the twenty-or-so organizations that have offered their support for our bill which creates a Medicaid Commission. I ask unanimous consent that the full list of groups and their letters of support be printed in the RECORD. The importance of this bill, I believe, is demonstrated by the outpouring of support expressed by such a diverse group of people representing state and local elected officials, providers and advocates. It is truly impressive.

With the debate growing over the President's budget proposal for the Medicaid program, Senator BINGAMAN and I are joining together with many of our colleagues to introduce this bill that calls for the creation of a Medicaid Commission. We are joined by Senators SNOWE, LINCOLN, SANTORUM, BEN NELSON, DEWINE, JEFFORDS, COLLINS, DURBIN, CHAFEE and KERRY in introducing the bill today.

For too long Medicaid has gone unnoticed by policy makers. Over the past few decades Congress has spent a great deal of time and effort modernizing the Medicare program, developing ideas to fund Social Security, reforming our intelligence gathering apparatus, and enacting legislation that stimulates the economy. Yet, through it all Medicaid has gone unnoticed, even though it recently became the nation's largest health care program.

As the former President of the Oregon Senate, I have long championed Medicaid and worked to protect the vulnerable populations who are helped by it. As a new member of the Finance Committee in 2003, I helped lead the effort to provide $20 billion in short-term fiscal assistance. However, since that time it has become clear that Medicaid requires more than band-aide fixes.

Medicaid requires a thorough review that should be performed by all key stakeholders working together to evaluate the program. We need to consider its pluses and minuses, and then chart a new path for the future. Our proposed Medicaid Commission will do just that.

As I have discussed with Governors, Secretary Leavitt and Administrator McClellan, we have a unique opportunity in the history of the Medicaid program. For once, everyone seems to be focused on protecting and improving the program. The challenge lies in bringing everyone together.

It certainly won't be easy, but accomplishing great things never is. It will require both parties to work together. It will require Congress to reach out to the Administration, Governors, State Legislators, providers and advocates to determine how best to improve such a vital program.

And it will require advocates and providers to be willing to listen to new ideas that may help improve the program by creating efficiencies, improving quality and expanding access to care. This can't be accomplished working against each other or only with select partners—it can only be accomplished when everyone works together.

I have never argued that this Commission is necessary because Medicaid is broken. I truly believe in this program because I have seen the difference it makes in Americans' lives. It helps support poor children so they can go to school healthy and ready to learn.

It helps a poor expectant-mother receive the prenatal care necessary for her new child to be born healthy and able to live a fulfilling life, it helps a family manage the care of a disabled child, and it helps an elderly person spend their last few years living with dignity. However, this program is not perfect; improvements can and should be made.

I don't have to look any further than my home State of Oregon to see that change can be beneficial. In Oregon, most people who live with a disability or who are elderly are served in their home or community. It seems appropriate that this would happen, but Oregon actually had to apply for a waiver to care for people in this way. That's because under Medicaid States receive incentives to care for people in nursing homes, it's called an institutional bias.

On the other hand, extreme reforms should be instituted simply to save money. Medicaid is expensive, but so is private health care coverage in this country. And in comparison, Medicaid is a pretty good deal.

On a per-capita basis, Medicaid has only grown at a little more than four percent while private sector health care costs have grown at over 12 percent. The problem with Medicaid is that enrollment is growing and a lot more money is being spent on long-term care compared to years past.

Much work is ahead of us. And one of the best ways to keep Medicaid on the right path and ensure its long-term sustainability is to enact this bill right now. If this Commission were made law today, we could have its recommendations in time to inform Congress' deliberations next year. We have a short window of opportunity before us. I urge my colleagues, the President and all supporters to embrace this bill today and call for its passage so the Medicaid Commission can get to work.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

ORGANIZATIONS SUPPORTING THE BIPARTISAN COMMISSION ON MEDICAID ACT OF 2005

National Alliance for the Mentally Ill (NAMI); National Association of Public Hospitals & Health Systems (NAPH); American Hospitals Association (AHA); National Association of Community Health Centers (NACHC); National Association of Children's Hospitals (NACH); AIDS Institute; National Rural Health Association; Catholic Health Association of the United States; National Conference on Aging (NCOA); Conference of State Legislatures (NCSL); National Hispanic Medical Association (NHMA); The American Academy of HIV Medicine; American Association of Family Physicians (AAFP); Association for Community Affiliated Plans (ACAP); American Health Care Association (AHCA); National Association of Counties (NACo); American College of Obstetricians & Gynecologists (ACOG); American Dental Association (ADA); American Psychiatric Association; Alliance for Quality Nursing Home Care; American Geriatrics Society.

AMERICAN HEALTH CARE ASSOCIATION,
Washington, DC, February 7, 2005.

Hon. GORDON SMITH,
U.S. Senate, Russell Senate Office Building, Washington, DC.

Hon. JEFF BINGAMAN,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATORS SMITH AND BINGAMAN: I am writing on behalf of the American Health

Care Association and the National Center for Assisted Living, the nation's leading long term care organizations. AHCA/NCAL represent more than 10,000 non-profit and proprietary facilities dedicated to continuous improvement in the delivery of professional and compassionate care for our nation's frail, elderly and disabled citizens who live in nursing facilities, assisted living residences, subacute centers and homes for persons with mental retardation and developmental disabilities. AHCA/NCAL and their membership are committed to performance excellence and Quality First, a covenant for healthy, affordable and ethical long term care.

We review with great interest your draft legislation that would establish a Bipartisan Commission on Medicaid and the Medically Underserved. We welcome focus on the Medicaid program from a population and a payment perspective. Long term care is unique in that the government is the purchaser of almost all nursing home services. The government demands that quality be first rate—as it should—yet the payment structure that would support greater quality is regulated in silos, separate from each other. At a time when we as a nation ought to be strengthening our long term care infrastructure to prepare for the wave of baby-boom retirees who will enter the system, we are, instead, allowing the infrastructure to deteriorate.

Heretofore, Congress has focused on Medicare primarily for the long term care sector, yet Medicare is a small albeit significant portion of our patient population. lt is becoming a better known fact that the Medicaid program funds the majority of the care for people in nursing homes. Approximately 67% of the average nursing home patient population relies on Medicaid to pay their bill. And, approximately 50% of the average nursing home's revenues come from Medicaid.

This is why we find it illogical that the Medicare Payment Advisory Commission (MEDPAC) continues to focus solely on the sector's Medicare-only issues—without also looking at Medicaid. When it comes to making important public policy recommendations that truly impact people's lives, it is inconceivable that data used to reach conclusions about the sufficiency of Medicare funding fails to look collectively at the real, and growing, interdependence between Medicare and Medicaid.

We must take steps to begin to reform the long term care system in terms of its reliance on the Medicaid program. Yet, reform does not happen in a vacuum and we must have a debate of ideas. We know a key stakeholder—the National Governors Association—has placed this issue high on their list of priorities. We are also beginning to see this issue raised within the Social Security debate.

We support your legislation but do so with some recommendations. First, we recommend that your legislation consider the entire long term sector in terms of our payment structure. Second, time is running out for reform and so we believe the Commission should be vested with adequate power and authority that its recommendations make a significant impact on the policymaking process. We are not sure if the Commission in its current form has enough force to really be the catalyst for new ideas for reform.

We wholeheartedly believe that a far more holistic evaluation is called for at this critical point in time, so that beneficiaries will not fall through the cracks due to an incomplete data picture and a short-sighted policy. Again, thank you for the opportunity to review your legislation and I look forward to working with you on Medicaid issues this year.

Sincerely,

HAL DAUB,
CEO and President.

THE AIDS INSTITUTE,
Washington, DC, January 24, 2005.

Re Bipartisan Commission on Medicaid and the Medically Underserved Act of 2005.

Senator GORDON SMITH,
U.S. Senate,
Washington, DC.
Senator JEFF BINGAMAN,
U.S. Senate,
Washington DC.

DEAR SENATORS SMITH AND BINGAMAN: As the single largest source of federal financing of health care and treatment for low income people with HIV/AIDS, the future viability of our Nation's Medicaid program will have a direct bearing on the health of hundreds of thousands of Americans living with HIV/AIDS. Since Medicaid provides access to healthcare for 55 percent of all people living with AIDS, 44 percent of people with HIV, and 90 percent of all children living with AIDS, it plays a critical role in providing access to life-saving medications that prevent illness and disability, and allow people to live longer, more productive lives.

Because many people with HIV/AIDS are low income, or become low income-and disabled, Medicaid is an important source of coverage. In FY 2002, Medicaid spending on AIDS care totaled $7.7 billion, including $4.2 billion in federal dollars and $3.5 billion in state funds.

Any radical change to the benefits provided by Medicaid or its financing structure can have devastating impacts that can seriously jeopardize access to HIV/AIDS care in the United States. What is needed is a carefully crafted, long term solution to the current challenges facing the Medicaid program so that low income and disabled Americans, including those living with HIV/AIDS, are provided the necessary healthcare they require.

The AIDS Institute applauds you on the introduction of the ''Bipartisan Commission on Medicaid and the Medically Underserved Act of 2005'', and looks forward to its passage in the very near future. The Bipartisan Commission envisioned by the bill would create the necessary careful review of the Medicaid program in a truly bipartisan manner with the expertise of representatives of the affected communities and government entities. The AIDS Institute strongly believes that such a review, as designed by your legislation, will result in a process to conduct a thoughtful review of the Medicaid program outside of the often partisan political process.

The AIDS Institute congratulates you on your leadership on this program, which is critically important to so many people living with HIV/AIDS, and the introduction of the ''Bipartisan Commission on Medicaid and the Medically Underserved Act of 2005''. We look forward to its enactment, participating in the Commission activities, and the eventual recommendations of its final report.

Sincerely,

Dr. A. GENE COPELLO,
Executive Director.

NATIONAL ASSOCIATION OF CHILDREN'S HOSPITALS,
Alexandria, VA, February 8, 2005.

Hon. GORDON SMITH,
U.S. Senate,
Washington, DC.
Hon. JEFF BINGAMAN,
U.S. Senate,
Washington, DC.

DEAR SENATOR SMITH AND SENATOR BINGAMAN: On behalf of the National Association of Children's Hospitals (N.A.C.H.) and our more than 120 members nationwide, I thank you for your leadership in introducing the ''Bipartisan Commission on Medicaid Act of 2005.'' Medicaid's critical role in providing health coverage to low-income children, as a major payer for children's hospital services and the primary safety net in the nation's pediatric health care infrastructure cannot be overstated. We welcome a thoughtful review to strengthen and secure this vital program for years to come.

Medicaid is now the largest single source of health care coverage for children in the nation. Half of its 53 million enrollees are children and one in four children in the country relies on Medicaid for health coverage. But children account for only 22 percent of the costs, with the lion's share of the costs attributable to people with significant health and long term care needs such as the elderly and people with disabilities.

Medicaid and children's hospitals are partners in caring for children. Our member hospitals are major providers of both inpatient and outpatient care to children on Medicaid. In fact, children on Medicaid represented 47 percent of all discharges and 41 percent of all outpatient visits at children's hospitals in FY 2003.

And children's hospitals rely on Medicaid to serve all children, not just low-income children. When provider reimbursements are cut, or benefits and eligibility changes are made, it affects children's hospitals' ability to provide a wide range of services that all children rely upon.

As the single largest payer of children's health care, Medicaid's performance affects the health care of all children. It's coverage of low income children has enabled advancements in pediatric medicine that would not have been otherwise possible. We need to sustain Medicaid's successes and move forward to ensure that eligible children are enrolled, with access to appropriate, effective and safe care.

Your legislation recognizes, as do our member hospitals, that the future of Medicaid is not simply about cost. A hasty move toward program reforms without a thorough review of the program with input from those most closely associated with the program would be irresponsible. The National Association of Children's Hospitals applauds your efforts to direct attention to how to improve service delivery and quality care in Medicaid.

We again congratulate you on your leadership in introducing this important legislation and we look forward to working toward its enactment.

Sincerely,

LAWRENCE A. MCANDREWS.

ASSOCIATION FOR COMMUNITY AFFILIATED PLANS,
Washington, DC, February 8, 2005.

Hon. GORDON SMITH,
Hon. JEFF BINGAMAN,
U.S. Senate,
Washington, DC.

DEAR SENATORS SMITH AND BINGAMAN: I write today on behalf of the members of the Association for Community Affiliated Plans (ACAP), an organization of Medicaid-focused community affiliated health plans committed to improving the health of vulnerable

populations and the providers who serve them, to express our support for your legislation, ''The Bipartisan Commission on Medicaid Act of 2005.'' ACAP's Medicaid-focused managed care plans serve over 1.7 million Medicaid beneficiaries in states across the country.

The demand for efficiency and quality in our nation's health care system combined with the fiscal pressures on the federal, state and local governments has spurred consideration of a broad spectrum of proposals to reform the Medicaid program. Like you, ACAP believes the forty year-old program is in need of updating. However meaningful and sustainable changes will only occur if federal and state policymakers along with providers, health plans, consumers and others undertake a comprehensive and forthright examination of the Medicaid program.

The purpose of such a review should be to improve the efficiency of the Medicaid program based on historical experiences and recent advances in health care while preserving the fundamental purpose of the program—to serve as the nation's health care safety net for the millions of low income children, families, elderly, and disabled.

ACAP believes that your legislation establishing a Medicaid commission would move our nation's policymakers and health care leaders in the right direction. The commission's work would be instrumental in understanding the underlying inefficiencies as well as the initiatives and programs that have proven successful. In turn, the commission would direct health care leaders to respond accordingly with improvements that can and should be made to the Medicaid program.

Should your legislation be enacted into law, we encourage you to include a representative of the managed care plans on the Commission. Medicaid managed care has been shown to provide greater quality of care and access to providers at a lower price than the traditional fee-for-service programs. As such, it can serve as a model for reform of the Medicaid program.

Tens of millions of Americans rely on Medicaid to receive health care services. ACAP believes your commission would result in reform that will be thoughtfully considered in light of the significant consequences for Medicaid enrollees as well as the providers that deliver their care.

Please do not hesitate to contact me if there is any way we can contribute further to this effort.

Sincerely,

MARGARET A. MURRAY,
Executive Director.

NATIONAL ASSOCIATION OF
COMMUNITY HEALTH CENTERS, INC.,
Washington, DC, February 7, 2005.

Hon. GORDON SMITH,
Hon. JEFF BINGAMAN,
U.S. Senate,
Washington, DC.

DEAR SENATORS SMITH AND BINGAMAN: On behalf of the National Association of Community Health Centers, the advocate voice for our nation's Community, Migrant, Public Housing and Homeless Health Centers, and the more than 15 million underserved people cared for by them, I am writing to offer our strong endorsement of your legislation to create a bipartisan commission on Medicaid.

Pressure undoubtedly is growing at the federal and state levels to consider reforms to Medicaid, some of which could dramatically alter its fundamental structure. The commission envisioned by your legislation would provide the necessary leadership and serve as a credible forum for developing viable solutions to strengthen Medicaid's long-term financial health and assure that it continues its crucial role as a safety net for our nation's most vulnerable populations.

Community health centers serve as a major provider of primary and preventive care to nearly 6 million of the estimated 51 million people served by Medicaid. Moreover, studies continue to demonstrate that health centers save Medicaid 30% in total health care costs compared to other providers. Unfortunately, some reform proposals now being discussed merely seek to cap spending or restrict Medicaid's long-term cost, raising significant concerns about the continued ability of health centers and other safety net providers to provide quality health care to Medicaid patients.

Health centers believe efforts to improve Medicaid should seek to preserve the federal guarantee of its coverage, and not reduce or eliminate its services or consumer protections. In addition, we also believe it is important that these efforts recognize the critical role that health centers and other safety net providers play as essential sources of care for millions of Medicaid recipients and uninsured Americans.

Medicaid is a health insurance program of critical importance in this country, and finding solutions to its current challenges can be daunting. However, lawmakers must strive to forge a bipartisan consensus that aims to protect the public's health, while ensuring that its benefits and services remain a reality for low-income individuals. We strongly believe that your commission is the appropriate forum to achieve this goal. Therefore, we are proud to endorse and offer our full support for your legislation, and we stand ready to assist you in helping to achieve its enactment.

Please do not hesitate to contact me or Licy Do Canto, Assistant Director of Health Care Financing Policy, if there is any way we can contribute further to this effort.

Sincerely,

DANIEL R. HAWKINS, Jr.,
Vice President for Federal, State, and Public Affairs.

THE CATHOLIC HEALTH ASSOCIATION,
Washington, DC, February 8, 2005.

Hon. GORDON SMITH,
Chairman, Special Committee on Aging, U.S. Senate, Washington, DC.

DEAR CHAIRMAN SMITH: On behalf of the Catholic Health Association of the United States (CHA), the national leadership organization of more than 2,000 Catholic health care sponsors, systems, facilities, and related organizations, I am writing to express our strong support for the ''Bipartisan Commission on Medicaid Act of 2005.''

As you know, Medicaid provides crucial services to over 50 million low-income children and pregnant women, the elderly, and persons with disabilities. Many of these individuals receive care in Catholic hospitals and Catholic long-term care facilities. Without a strong and vibrant Medicaid program, the number of uninsured individuals in the United States would be dramatically worse. In light of the critical role that Medicaid plays in the health of our nation, we believe that it is important to undertake a comprehensive review of the program before making any dramatic changes. To do otherwise could further unravel an already frail health care safety net.

For that reason, we are pleased to offer our support for your legislation. By assembling a 23-member commission to undertake a thorough review of the Medicaid program, your legislation can help ensure that Medicaid continues to play a key role in the health care safety net for years to come. We are particularly pleased that the commission would be comprised in part from important stakeholders in the Medicaid program, including representation from the health care provider community and advocates for Medicaid beneficiaries.

We are grateful for your continued efforts in support of the Medicaid program. If we can be of further assistance, please do not hesitate to contact me.

Sincerely,

MICHAEL RODGERS,
Vice President, Advocacy and Public Policy.

NATIONAL ASSOCIATION OF PUBLIC
HOSPITALS AND HEALTH SYSTEMS,
Washington, DC February 8, 2005.

Hon. GORDON SMITH,
Hon. JEFF BINGAMAN,
U.S. Senate,
Washington, DC.

DEAR SENATORS SMITH AND BINGAMAN: I am writing on behalf of the National Association of Public Hospitals and Health Systems (NAPH) to express our support for the Bipartisan Commission on Medicaid Act of 2005. The legislation recognizes Medicaid's critical role in supporting our nation's safety net and emphasizes the need to carefully consider any changes to the program in order to protect Medicaid patients and the providers who serve them.

NAPH represents more than 100 of America's metropolitan area safety net hospitals and health systems. NAPH hospital systems serve unique roles in their communities often as the largest provider of inpatient and ambulatory care to Medicaid patients and patients without insurance and as providers of essential services needed by everyone in their communities, such as trauma and burn care services. Medicaid is the primary mechanism for ensuring the provision of access to health care for low-income patients. It supports safety net providers, including NAPH members, who dedicate themselves to providing high quality care to anyone, regardless of their ability to pay. Medicaid payments provide 49 percent of the net patient care revenues of NAPH members and Medicaid disproportionate share hospital (DSH) payments alone support nearly 25 percent of the unreimbursed care provided by NAPH members. Therefore, Medicaid payment issues are of critical importance to NAPH members.

The proposed Commission on Medicaid could play an important role in protecting the future of Medicaid and in ensuring that any changes to Medicaid account for the various roles that the program currently serves. Promoting a thorough discussion among representatives of various Medicaid stakeholders to develop comprehensive recommendations is a responsible approach to examining the program. Measured consideration is especially important today as the number of uninsured continues to rise and as state Medicaid budgets experience increasing pressure. NAPH does not believe that reductions in the rate of growth or caps on Medicaid spending are necessary to achieve stability in the program.

Thank you for your ongoing support of Medicaid and safety net providers. We look forward to continuing to work with you on finding sustainable ways to preserve and protect Medicaid.

Sincerely,

LARRY S. GAGE,
President.

NAMI,
Arlington, VA, February 7, 2005.

Hon. GORDON SMITH,
Hon. JEFF BINGAMAN,
U.S. Senate,
Washington, DC.

DEAR SENATORS SMITH AND BINGAMAN: On behalf of the 210,000 members and 1,200 affiliates of the National Alliance for the Mentally Ill (NAMI), I am writing to express our

strong support for your legislation to form a bipartisan commission to study the future of the Medicaid program. As the nation's largest organization representing people with severe mental illnesses and their families, NAMI is pleased to support this important measure.

As you know, Medicaid is now the dominant source of funding for treatment and support services for both children and adults living with severe mental illness—currently, Medicaid comprises 50% of overall public mental health spending, a figure that is expected to rise to 60% by 2010. More importantly, Medicaid is a safety net program that is intended to protect the most disabled and vulnerable children and adults struggling with severe chronic illness and severe disabilities such as mental illness.

At the same time, Medicaid is facing enormous stress at the state level and in 2005 we expect more and more states will be seeking to curtail future spending. NAMI remains extremely concerned that these cuts are being made at the state level without any discussion about the long-term impact of the program. It is critically important that this debate gets beyond cost and considers reforms that can make the program more effective in meeting the needs of individuals who depend on Medicaid as a health care and community support safety net.

Your legislation to establish a bipartisan commission on Medicaid is critically important step forward to helping the federal government and the states consider and promote policies that improve the program and maintain its role in protecting the needs of low income people with severe disabilities. NAMI thanks you for your leadership on this important issue. We look forward to working with you to move this important legislation forward in 2005.

Sincerely,

MICHAEL J. FITZPATRICK, M.S.W.,
Executive Director.

THE NATIONAL COUNCIL ON THE AGING,
Washington, DC, February 8, 2005.

Hon. GORDON SMITH,
Russell Office Building,
Washington, DC.

DEAR SENATOR SMITH: On behalf of the National Council on the Aging (NCOA)—the first organization formed to represent America's seniors and those who serve them—is grateful for your leadership on Medicaid issues and supports your proposal to establish a bipartisan Commission on Medicaid.

Medicaid is the critical health care safety net for over 50 million of our nation's most vulnerable, poorest citizens. Seniors who depend on Medicaid are our oldest and most frail.

While Medicaid is an extremely important program, it is also quite expensive. Some have gone so far as to question our ability to continue to afford the essential services provided under the program. We fear that some proposals to reform Medicaid may be driven solely by budget concerns and misplaced priorities, rather than what is best for our nation and its citizens.

Medicaid is also a very complex program. We fear that only a small handful of members in the Congress and their staff understand how the program works, who it serves and what it covers.

Largely due to our record federal budget deficit and increasing budget challenges in the states, Medicaid this year is being considered for significant spending reductions and possible structural reforms. In our view, we should be very cautious before moving forward with far-reaching changes that could harm millions of Americans in need.

With the aging of the baby boom generation, Medicaid will face increasingly serious challenges in the future, not unlike those under the Medicare and Social Security programs. For those programs, Congress established bipartisan Commissions to consider reforms to strengthen and improve them as we begin to address demographic challenges. A similar non-partisan analysis is desirable for Medicaid. Bringing together experts and key stakeholders is a necessary prerequisite to reforming the program. For example, we need to be more creative about how to finance long-term care, while promoting access to a broader range of home and community services. We therefore support your proposal to establish a bipartisan Commission on Medicaid and look forward to working with you to enact legislation into law.

Sincerely

JAMES FIRMAN,
President and CEO.

AMERICAN HOSPITAL ASSOCIATION,
Washington, DC, February 4, 2005.

Hon. GORDON SMITH,
Hon. JEFF BINGAMAN,
U.S. Senate,
Washington, DC.

DEAR SENATORS SMITH AND BINGAMAN: On behalf of our 4,700 hospitals, health care systems, and other health care provider members, and our 31,000 individual members, the American Hospital Association (AHA) strongly supports your legislation to create a bipartisan commission on Medicaid and the uninsured. Pressure is mounting to reform Medicaid, our nation's largest health care safety net program. Your commission would provide the right setting to carefully deliberate needed policy changes and ensure the long-term financial stability of the program.

Medicaid serves over 52 million people, surpassing the number served by the Medicare program. Half of Medicaid's beneficiaries are children and one-quarter are elderly and disabled. It serves our nation's most vulnerable populations, and provides half of all the dollars spent on long term care in this country. Reform will have enormous consequences for those Medicaid covers and the providers that deliver their care. The blue ribbon panel you propose would be a responsible approach to examining the program.

The American Hospital Association does not believe that reductions in the rate of growth or caps on spending for Medicaid is needed to achieve positive, successful modernizations. The AHA stands ready to assist you in securing passage legislation for thoughtful, deliberate change to protect our most vulnerable citizens.

Sincerely,

RICK POLLACK,
Executive Vice President.

AMERICAN PSYCHIATRIC ASSOCIATION,
Arlington, VA, February 9, 2005.

Hon. GORDON SMITH,
Chairman, Senate, Special Committee on Aging,
Washington, DC.
Hon. JEFF BINGAMAN,
Senator,
Washington, DC.

DEAR CHAIRMAN SMITH AND SENATOR BINGAMAN: The American Psychiatric Association (APA), the nation's oldest medical specialty society representing more than 35,000 psychiatric physicians nationwide, is pleased to commend your legislation to establish the Bipartisan Commission on Medicaid and the Medically Underserved. The establishment of a Commission to examine Medicaid and the medically underserved will help identify Medicaid's current benefits and areas of needed strengthening.

For millions of Americans with mental illnesses, Medicaid is a critical source of care. Medicaid is especially important to states as they face deficits that threaten the stability of Medicaid funding for patients. We are also concerned about the possible consequences for those of our dual eligible patients who face potential disruptions of treatment as they shift from Medicaid to Medicare. This bears close attention.

Your leadership in calling for an assessment of Medicaid is timely and appreciated. APA would be pleased to be a resource of expertise in psychiatry and medicine with respect to Medicaid.

Thank you again for your leadership in assessing the needs of the nation's medically underserved.

Sincerely,

JAMES H. SCULLY JR., M.D.,
Medical Director.

AMERICAN DENTAL ASSOCIATION,
Washington, DC, February 8, 2005.

Hon. GORDON SMITH,
Hon. JEFF BINGAMAN,
U.S. Senate,
Washington, DC.

DEAR SENATORS SMITH AND BINGAMAN: On behalf of the American Dental Association (ADA), our 152,000 members and 597 state and local dental societies, we would like to offer strong support for your legislation to establish a bipartisan commission on Medicaid and the uninsured. As Congress and individual states begin to contemplate and propose Medicaid reform options, it is critical to ensure an open dialogue with all Medicaid stakeholders. Your commission would allow policymakers, practitioners, provider institutions, patients and others to work together to provide necessary reforms to this important program.

The ADA is particularly concerned with improving access to oral health care for low-income children and adults served by the Medicaid program. In the 2000 landmark report, Oral Health in America, the Surgeon General concluded that dental decay is the most prevalent childhood disease—five times as common as asthma, particularly for this population. We know that only one-in-four children enrolled in Medicaid receives dental care and only eight states currently provide comprehensive adult dental benefits. Cumbersome administrative requirements, lack of case management and inadequate payment rates affect dentist participation in the program and utilization of dental services. More must be done to improve the Medicaid program to ensure adequate access to oral health services.

The ADA looks forward to working with you to pass this legislation and address ways to strengthen and improve the dental Medicaid program, and the Medicaid program as a whole.

Sincerely,

RICHARD HAUGHT, D.D.S.,
President.
JAMES B. BRAMSON, D.D.S.,
Executive Director.

Mr. BINGAMAN. Mr. President, Senator SMITH and I have worked together successfully on several issues within the last year to defend and improve our Nation's health care safety, including on an amendment to the Medicare prescription drug bill addressing community health center payments within Medicare that passed by a vote of 94–1. However, none of these initiatives have been more important than the legislation that we are introducing together today, along with a list of 13 other senators—7 Republicans, 5 Democrats, and 1 Independent, 7 of which serve on the Senate Finance Committee—to create a Bipartisan Commission on Medicaid.

Joining Senator SMITH and I as original cosponsors are: Senators SNOWE, JEFFORDS, SANTORUM, KERRY, DEWINE, DURBIN, CHAFEE, LINCOLN, COLLINS, NELSON of Nebraska, VOINOVICH, CORZINE, and COLEMAN.

I will not go into the specifics of the legislation, as Senator SMITH has explained how the Commission would be formed and would operate. Instead, I will take the time to explain why it is that the formation of commission is so important.

Medicaid is a critically important health care safety net program that provides health care services to over 50 million low-income children, pregnant women, seniors, and people with disabilities.

In New Mexico, Medicaid is the single largest payor for health care. All told, Medicaid covers the health care costs of more than 400,000 New Mexicans—nearly one-quarter of our State's population.

Although the least expensive to cover, those who benefit most from Medicaid are nearly 300,000 of New Mexico's children. Of the various populations covered, children represent almost two-thirds of all our State's beneficiaries, which is the highest ratio in the Nation according to data from the Kaiser Family Foundation.

However, Medicaid is much more than just a safety net program for children from low-income families. It also serves low-income adults and pregnant women. It also serves senior citizens and people with disabilities who receive the bulk of their health care through Medicare but who still rely on Medicaid for a substantial share of their benefits and cost-sharing assistance. Medicaid also provides critically needed funding to support our Nation's safety net providers, including disproportionate share hospitals.

In the President's budget that was just released, the administration has proposed cutting Medicaid by $60 billion over the next 10 years. Secretary Leavitt recently testified in the Senate Finance Committee that he believes ''Medicaid is flawed and inefficient.''

There are others that believe Medicaid is not working and that costs are spiraling out of control and so the program needs dramatic overhaul.

In contrast. there are also those that will attest that there is absolutely nothing wrong with Medicaid. I firmly believe neither point of view is correct.

First, Medicaid is far from broken. The cost per person in Medicaid rose just 4.5 percent per year from 2000 to 2004. That compares to a 12 percent rise in the annual cost of premiums in the private sector. If that is the comparison, Medicaid seems to be about the most efficient health care program around, even more so than Medicare.

The overall cost of Medicaid is going up largely, not because the program is inefficient, but because more and more people find themselves depending on this safety net program for their health care during a recession. When nearly 5 million people lost employer coverage between 2000 and 2003, Medicaid added nearly 6 million to its program. Costs rose in Medicaid precisely because it is working—and working well—as our Nation's safety net program.

Consequently, as noted previously, Medicaid now provides health care to over 50 million low-income Americans, including one-quarter of all New Mexicans.

This is precisely why I so strongly oppose block grants or any arbitrary caps on Federal spending for Medicaid. If we had caps in 2000 and Medicaid could not have responded to the economic downturn, we would have 50 million uninsured today. Medicaid is a Federal-State partnership and an arbitrary cap of the Federal share to States is nothing more than the Federal Government trying to shift all risk to States.

On the other hand, it is also not true that Medicaid is not in need of improvement. The administration is rightly concerned about certain State efforts to provide ''enhanced payments'' to institutional providers as a significant factor in driving Medicaid costs. Secretary Leavitt, in a speech to the World Health Care Congress on February 1, 2005, referred to State efforts to maximize Federal funding as ''the Seven Harmful Habits of Highly Desperate States.'' As a result, he called for ''an uncomfortable, but necessary, conversation with our funding partners, the States.''

Unfortunately, Medicaid reform driven by a budget reconciliation process is not a dialogue or conversation. It is a one-way mechanism for the Federal Government to impose its will on the States. The administration's budget calls for $60 billion in cuts to Medicaid, including $40 billion that would directly harm States.

Where is the conversation in that? In fact, the States have a fair amount of complaint with Federal cost shifting to the States. While I certainly do not speak for the National Governors' Association or National Conference of States Legislatures, some of those grievances are rather obvious and I share them.

For example, according to data from Kaiser Family Foundation, 42 percent of the costs in Medicaid are due to Medicare dual eligible beneficiaries. These dual eligibles are also a major driver of health costs in Medicare and this is a prime example of where better coordination between Medicare and Medicaid could improve both programs. States have been calling for better coordination for years to no avail.

In the Medicare prescription drug bill that was passed by the Congress in 2003, the Federal Government imposed what is referred to as a ''clawback'' mechanism which forces the States to help pay for the Federally-passed Medicare prescription drug benefit. Although States will derive a financial windfall from moving dual eligibles from Medicaid coverage to Medicare, some of the States believe the ''clawback'' will cost them more than if they continued to provide prescription drug coverage themselves.

The prescription drug bill also impacted States financially in a host of other ways that went largely unnoticed, including those that increased Medicaid costs for dual eligibles as a result of increases in the Medicare Part B deductible and increased payments to the new Medicare Advantage plans. The law also required States to help enroll low-income Medicare beneficiaries into the low-income drug benefit.

In fact, the Congressional Budget Office, or CBO, estimated that States had $5.8 billion in added enrollment of dual eligibles in Medicaid due to what they refer to as a ''woodworking'' effect on dual eligibles trying to sign up for the low-income drug benefit discovering they are also eligible for Medicaid benefits. CBO further estimated that States had $3.1 billion in new administrative and other costs added by the prescription drug legislation.

States had no ability to ''have a conversation'' with the Federal Government about the imposition of such costs on them when the Medicare prescription1rrug drug bill was passed, but they should have and will have in our Bipartisan Commission on Medicaid.

Furthermore, due to a recent rebenchmarking done by the Department of Commerce's Bureau of Economic Affairs with respect to the calculation of per capita income in the States and the application of that data by the Centers for Medicare and Medicaid Services, or CMS, the Medicaid Federal Medical Assistance Percentage, or FMAP, many States, including New Mexico, will see a rather dramatic decline in their Federal Medicaid matching percentage. In fact, due to the rebenchmarking and other factors, 29 states will lose Medicaid funding in 2006 by an amount of in excess of $800 million. Again, this occurred with no dialogue or conversation.

Mr. President, I agree with Secretary Leavitt that there should be a conversation among all the stakeholders about the future of Medicaid and about what are the fair division of responsibilities between the Federal Government, States, local governments, providers, and the over 50 million people served by Medicaid. It is for this reason that the Bipartisan Commission on Medicaid includes all of those stakeholders at the table to have a full discussion and debate about the future of Medicaid.

It is our intent that the recommendations would not be focused on cutting costs but about improving health care delivery to our Nation's most vulnerable citizens. However, they are not mutually exclusive. In fact, both can and should be done.

There are those that will argue that a commission may not reach a consensus to make recommendations to

improve the Medicaid program and so is not worth the effort. I would strongly disagree and point to the fact that the National Academy for State Health Policy recently convened a workgroup they called Making Medicaid Work for the 21st Century that included many of the Medicaid stakeholders and came forth with a 78-page report with numerous recommendations with respect to eligibility, benefits, and financing. According to the report entitled Improving Health and Long-Term Care Coverage for Low-Income Americans, the workgroup attempted to ''assess areas where it would be most productive to focus on improvement in the program, and to develop consensus around recommendations for reform.'' I would underscore the emphasis of the workgroup on ''improving'' Medicaid and health coverage. This should be the primary and overriding goal of the Bipartisan Commission on Medicaid that we are introducing today.

Before closing, I once again thank Senator SMITH, the other 12 Senate cosponsors, and the various stakeholders—State and local governments, providers, and consumers that have endorsed this legislation—in an effort, not to cut Medicaid, but to make it more efficient and effective in the delivery of care to our Nation's most vulnerable citizens.

I ask unanimous consent to have a copy of the Fact Sheet accompanying this legislation printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

FACT SHEET

BIPARTISAN COMMISSION ON MEDICAID

Senators Gordon Smith (R–OR), Jeff Bingaman (D–NM), Olympia Snowe (R–ME), Jim Jeffords (I–VT), Rick Santorum (R–PA), John Kerry (D–MA), Mike DeWine (R–OH), Richard J. Durbin (D–IL), Lincoln D. Chafee (R–RI) Blanche L. Lincoln (D–AR), Susan Collins (R–ME), Ben Nelson (D–NE), George Voinovich (R–OH), Jon S. Corzine (D–NJ), and Norm Coleman (R–MN) are introducing legislation that calls for the creation of a Bipartisan Commission on Medicaid.

Just as the Balanced Budget Act of 1997 called for the creation of the Bipartisan Commission on the Future of Medicare, the Medicaid program should also undergo a comprehensive and thorough review of what is and is not working and how to improve service delivery and quality in the most cost-effective way possible.

This legislation recognizes that determining the future of Medicaid is not simply about cost. While Medicaid is estimated to cost the federal government $188 billion in FY 2005, attention also should be given to the diverse population served. Over 50 million people receive care through Medicaid, including low-income seniors, people with disabilities, children, and pregnant women. Further, it is important to note that while costs are increasing, Medicaid is growing at a slower per capita rate than either Medicare or the private sector.

The Medicaid Commission would be charged with a number of duties, including reviewing and making recommendations with respect to the long-term goals, populations served, financial sustainability (federal and state responsibility), interaction with Medicare and the uninsured, and the quality of care provided.

Medicaid is a critically important program helping meet the health care needs of a diverse population through four different programs by serving as:

(1) a source of traditional insurance for poor children and some of their parents;

(2) a payer for a complex range of acute and long term care services for the frail elderly and people with disabilities;

(3) a source of wrap-around coverage or assistance for low-income seniors and people with disabilities on Medicare, including coverage of additional benefits and assistance with Medicare premiums and copayments; and,

(4) the primary source of funding to safety net providers that serve both Medicaid patients and the 45 million uninsured.

In recognition of this diversity, the bill's Medicaid Commission would be comprised of 23 members that reflect all the stakeholders and components in the Medicaid program. Those members include the following: One Member appointed by the President; Two House members (current or former) appointed by the Speaker and Minority Leader; Two Senators (current or former) appointed by the Majority and Minority Leader; Two Governors designated by NGA; Two Legislators designated by NCSL; Two state Medicaid directors designated by NASMD; Two local elected officials appointed by NACo; Four consumer advocates appointed by congressional leadership; Four providers appointed by congressional leadership; Two program experts appointed by Comptroller General.

The Commission has just one year to hold public hearings, conduct its evaluations and deliberations, and issue its report and recommendations to the President, the Congress, and the public.

Ms. SNOWE. Mr. President, I am pleased to join with a number of my colleagues in cosponsoring the Bipartisan Commission on Medicaid and the Medically Underserved Act of 2005, which Senator SMITH and Senator BINGAMAN are introducing today.

The Medicaid program provides essential medical services to low-income and uninsured children and their families, pregnant women, senior citizens, individuals with disabilities, and others. Last year, nearly 55 million Americans were enrolled in Medicaid, including more than 300,000 in Maine where one in five people now receive health care services through MaineCare, our State's Medicaid program.

Individuals who rely upon Medicaid-funded health services have no other option. Without Medicaid, they would join the ever growing ranks of the uninsured in this country, which now numbers an all-time high of more than 45 million Americans who lacked health coverage at some point last year. These two groups represent a total of 100 million Americans who would have no health insurance were it not for Medicaid coverage which reaches just over half of them. And to the extent that the Federal Government reduces its support for Medicaid funding, the numbers of uninsured Americans will rise at an even faster rate.

As Congress begins to consider the administration's Fiscal Year 2006 Budget, I believe we must take a balanced approach that is both fiscally responsible and reflects our long-standing commitments to provide health care for many of the low-income and uninsured through the Medicaid program. Although we face growing budget deficits and ever tightening Federal budgets, the Federal Government cannot simply abandon its responsibility to help states provide health care access to our most vulnerable citizens.

Today, Medicaid is the fastest growing component of State budgets, according to the most recent survey of the National Governors Association. Total Medicaid spending nationwide now averages 22 percent of State budgets, while State spending on all healthcare functions is approximately 31 percent. However, although its costs are increasing, the annual growth in Medicaid spending on a per capita basis is growing more slowly, at 4.5 percent a year, than the private sector where health insurance premiums have increased an average of 12.5 percent a year for the last 3 years.

The economic downturn which State economies experienced several years ago, and from which many States are only now emerging, has continued to leave many families jobless and without health insurance, forcing them to turn to Medicaid. This has put an enormous strain on the states already strapped with budget scarcities. Many States reduced Medicaid benefits last year and even more restricted Medicaid eligibility in an effort to satisfy their budgetary obligations.

In fact, the Chairman of the National Governors Association, Governor Warner of Virginia, and the Vice Chairman, Governor Huckabee of Arkansas, recently warned Congress that if Federal spending for Medicaid were capped and the number of Medicaid recipients increased sharply, States would face dire fiscal consequences. According to the Governors, total costs for State Medicaid programs are growing at an annual rate of 12 percent, and total Medicaid expenditures now exceed that of Medicare, due primarily to factors beyond States' control, especially the costs of long-term care: Medicaid now accounts for 50 percent of all State long-term care spending and pays for the care of 70 percent of those in nursing homes.

At this time, therefore, it is crucial that we continue to provide sufficient Federal funding for Medicaid, which has worked so well since it began providing care for some of our most vulnerable populations 40 years ago. We must proceed cautiously before making any significant changes in the program, and the Medicaid Commission established by this bill will ensure that necessary deliberative approach.

The concept of a commission to undertake a comprehensive review of the Medicaid program and recommend possible changes is similar to the commission which Congress established in the late 1990s, the Bipartisan Commission on the Future of Medicare. That commission examined various aspects of

the Medicare program to determine areas that should be modernized and later recommended a number of changes, including a prescription drug benefit. Those recommendations initiated the process of congressional debate and consideration of reforming the Medicare program, culminating in the Medicare Prescription Drug, Improvement, and Modernization Act which passed in 2003 and, among other reforms, included the new prescription drug benefit for seniors which will take effect next year.

The new Medicare prescription drug benefit will have a major impact on Medicaid since it will shift Federal expenditures for drug benefits currently provided by Medicaid for the ''dual eligible'' population—those who are eligible for both Medicaid and Medicare—to Medicare. However, this will not lift most of the financial responsibility and burden of prescription drug costs from the States. Recent estimates by the National Governors Association show that currently 42 percent of all Medicaid dollars are spent on ''dual eligible'' Medicare beneficiaries, although they comprise only a small percentage of Medicaid cases, and they are covered by Medicare for other services.

The new prescription drug program includes a provision known as the ''claw-back'' which will require States to remit funds to the Federal Government, based on their inflation-adjusted 2003 per person Medicaid expenditures for prescription drugs for these beneficiaries. Although the percentage share of drug costs that States must pay for the dual eligibles will decline over time, from 90 percent to 75 percent, States will continue to pay the lion's share of dual eligibles' prescription drug costs. Many States are just now recognizing this fact and are looking for ways to accommodate these ongoing costs.

Unanswered questions like these remain concerning the ultimate impact of the Medicare drug program on State budgets and Medicaid programs. One of the primary duties of the Medicaid Commission would be to review and make recommendations on the interaction of Medicaid with Medicare and other Federal health programs.

Moreover, the formula for calculating the Federal matching rate, known as the Federal Medical Assistance Percentage, FMAP, which determines the Federal Government's share of a State's expenditures for Medicaid each year, has also contributed to the Medicaid problems that States are facing. The FMAP formula is designed so that the Federal Government pays a larger portion of Medicaid costs in States with a per capita income lower than the national average. However, the formula looks back 3 years, to points in time that are not necessarily reflective of a State's current financial situation.

In fiscal year 2003, for example, the FMAP for that year was calculated in 2001 for the fiscal year beginning October 2002. The FMAP for FY 2003 was determined on the basis of State per capita income over the 3-year period of 1998 through 2000, when State economies were growing significantly. Yet in 2003, when this matching rate was in effect, a serious economic downturn was affecting many State budgets, and that downturn has contributed greatly to the growth of Medicaid for several years now.

We recognized this situation in the last Congress and provided for State fiscal relief by providing a temporary increase in the Federal Medicaid matching rate, which provided $10 billion in fiscal relief to States during fiscal 2003 and 2004, when we passed the Jobs and Growth Tax Relief Reconciliation Act of 2003. But that fiscal relief has sunset.

One of the duties of the Medicaid Commission would be to make recommendations on how to make Federal matching payments more equitable with respect to the States and the populations they serve, as well as how to make them more responsive to changes in States' economic conditions.

The fact is, Medicaid and Medicare have complex responsibilities, financing, and interrelationships and that is why a Medicaid Commission is vital for the future state budgets and the Medicaid program as a whole.

I urge my colleagues to join us supporting this legislation to help sustain and improve this critical health care safety net for our most vulnerable Americans.

By Mr. REID (for himself, Mr. BAUCUS, Mr. STEVENS, Mr. NELSON of Nebraska, and Mr. ENSIGN):

S. 339. A bill to reaffirm the authority of States to regulate certain hunting and fishing activities; to the Committee on the Judiciary.

Mr. REID. Mr. President, today I am introducing the ''Reaffirmation of State Regulation of Resident and Nonresident Hunting and Fishing Act of 2005.'' This legislation explicitly reaffirms each State's right to regulate hunting and fishing. I am pleased that Senators BEN NELSON, JOHN ENSIGN, MAX BAUCUS, and TED STEVENS are joining me in sponsoring this important bill.

This is a Nevada issue, but it also is a national issue, as a recent Federal circuit court ruling undermines traditional hunting and fishing laws. In Conservation Force v. Dennis Manning, the Ninth Circuit Court of Appeals ruled that State laws that distinguish between State residents and non-residents for the purpose of affording hunting and related privileges are constitutionally suspect.

This threatens the conservation of wildlife resources and recreational opportunities. Although the Ninth Circuit found the purposes of such regulation to be sound, the court questioned the validity of tag limits for non-resident hunters.

I respect the authority of States to enact laws to protect their legitimate interests in conserving fish and game, as well as providing opportunities for in-State and out-of-State residents to hunt and fish. That's what this legislation says—we respect that State right.

Sportsmen are ardent conservationists. They support wildlife conservation not only through the payment of State and local taxes and other fees, but also through local non-profit conservation efforts and by volunteering their time.

For example, in Nevada there are great groups such as Nevada Bighorns Unlimited and the Fraternity of Desert Bighorn. These are dedicated sportsmen who spend countless hours and much of their own money building ''guzzlers'' in the desert, which help provide a reliable source of water for bighorn sheep and other wildlife. Without these efforts it would be extremely hard for bighorn sheep to survive in much of their historic range in Nevada because much of their historic range has been fragmented by development. Today, Southern Nevada is in the midst of a very difficult 500-year drought, and the work of the conservation groups has saved thousands of our bighorn sheep.

The deep involvement of local sportsmen in protecting and conserving wildlife is one important justification for the traditional resident/non-resident distinctions, and provides the motivation for our legislation. The regulation of wildlife is traditionally within a State's purview, and this legislation simply affirms the traditional role of States in the regulation of fish and game.

This bill is time sensitive. The out-of-State hunters that brought the suit in the 9th Circuit are now threatening to get a restraining order from the Federal court to delay the opening of the big game season in Nevada this year. This threat itself is causing great damage to conservation and fish and game management in Nevada.

According to The Las Vegas Sun, Nevada's Wildlife Department has already borrowed $3 million to get through the fiscal year, eliminated three positions, and has plans to eliminate five more. Delaying hunting seasons while the courts resolve this issue could cause the Department to literally shut down.

Uncertainty with regard to hunting and fishing regulations is bad for the conservation of Nevada's resources. This bill needs to pass now. I look forward to working with my colleagues to expedite passage of this important legislation. I ask that the text of this bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 339

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Reaffirmation of State Regulation of Resident and

Nonresident Hunting and Fishing Act of 2005''.

SEC. 2. DECLARATION OF POLICY AND CONSTRUCTION OF CONGRESSIONAL SILENCE.

(a) IN GENERAL.—It is the policy of Congress that it is in the public interest for each State to continue to regulate the taking for any purpose of fish and wildlife within its boundaries, including by means of laws or regulations that differentiate between residents and nonresidents of such State with respect to the availability of licenses or permits for taking of particular species of fish or wildlife, the kind and numbers of fish and wildlife that may be taken, or the fees charged in connection with issuance of licenses or permits for hunting or fishing.

(b) CONSTRUCTION OF CONGRESSIONAL SILENCE.—Silence on the part of Congress shall not be construed to impose any barrier under clause 3 of Section 8 of Article I of the Constitution (commonly referred to as the ''commerce clause'') to the regulation of hunting or fishing by a State or Indian tribe.

SEC. 3. LIMITATIONS.

Nothing in this Act shall be construed—

(1) to limit the applicability or effect of any Federal law related to the protection or management of fish or wildlife or to the regulation of commerce;

(2) to limit the authority of the United States to prohibit hunting or fishing on any portion of the lands owned by the United States; or

(3) to abrogate, abridge, affect, modify, supersede or alter any treaty-reserved right or other right of any Indian tribe as recognized by any other means, including, but not limited to, agreements with the United States, Executive Orders, statutes, and judicial decrees, and by Federal law.

SEC. 4. STATE DEFINED.

For purposes of this Act, the term ''State'' includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands.

By Mr. LUGAR:

S. 340. A bill to maintain the free flow of information to the public by providing conditions for the federally compelled disclosure of information by certain persons connected with the news media; to the Committee on the Judiciary.

Mr. LUGAR. Mr. President, I rise today to introduce the Free Flow of Information Act of 2005. This bill was originally introduced in the House of Representatives by my friend and colleague, Congressman MIKE PENCE. I applaud the initiative by my colleague to address this important issue and I am pleased to have this opportunity to be the Senate sponsor.

Last year, Congress passed legislation I proposed that directed the State Department to increase and add greater focus to international initiatives to support the development of free, fair, legally protected and sustainable media in developing countries.

I am pleased to announce that the State Department and the National Endowment for Democracy have embraced this initiative and are now proceeding with implementing this initiative.

Our Founders understood that free press is a cornerstone of democracy. To embrace and implement President Bush's bold and visionary call for the spread of democracy and freedom in the world, it is incumbent upon us to ensure that foreign assistance programs focus on the development of all the institutions that help democracies work and protect basic human rights.

While we focus on those needs abroad, we cannot let those basic freedoms erode at home. The Constitution makes very clear that freedom of the press should not be infringed. A cornerstone of our society is the open market of information which can be shared through ever expanding mediums. The media serves as a conduit of information between our governments and communities across the country.

It is important that we ensure reporters certain rights and abilities to seek sources and report appropriate information without fear of intimidation or imprisonment. This includes the right to refuse to reveal confidential sources. Without such protection, many whistleblowers will refuse to step forward and reporters will be disinclined to provide our constituents with the information that they have a right to know. Promises of confidentiality are essential to the flow of information the public needs about its government.

The Free Flow of Information Act closely follows existing Department of Justice guidelines for issuing subpoenas to members of the news media. These guidelines were adopted in 1973 and have been in continuous operation for more than 30 years. The legislation codifies the conditions that must be met by the government to compel the identity of confidential sources.

I am hopeful that my colleagues will give careful consideration to the merits of this legislation. It provides an appropriate approach and careful balance to protect our freedom of information while still enabling legitimate law enforcement access to information.

AMENDMENTS SUBMITTED AND PROPOSED

SA 4. Mrs. FEINSTEIN (for herself and Mr. BINGAMAN) submitted an amendment intended to be proposed by her to the bill S. 5, to amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, and for other purposes.

SA 5. Mr. PRYOR (for himself, Mr. SALAZAR, Mr. BINGAMAN, and Ms. CANTWELL) proposed an amendment to the bill S. 5, supra.

SA 6. Mr. CORNYN submitted an amendment intended to be proposed by him to the bill S. 5, supra; which was ordered to lie on the table.

SA 7. Mr. CORNYN submitted an amendment intended to be proposed by him to the bill S. 5, supra; which was ordered to lie on the table.

SA 8. Mr. CORNYN submitted an amendment intended to be proposed by him to the bill S. 5, supra; which was ordered to lie on the table.

SA 9. Mr. CORNYN submitted an amendment intended to be proposed by him to the bill S. 5, supra; which was ordered to lie on the table.

SA 10. Mr. CORNYN submitted an amendment intended to be proposed by him to the bill S. 5, supra; which was ordered to lie on the table.

SA 11. Mr. CORNYN submitted an amendment intended to be proposed by him to the bill S. 5, supra; which was ordered to lie on the table.

SA 12. Mr. FEINGOLD proposed an amendment to the bill S. 5, supra.

TEXT OF AMENDMENTS

SA 4. Mrs. FEINSTEIN (for herself and Mr. BINGAMAN) submitted an amendment intended to be proposed by her to the bill S. 5, to amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, and for other purposes; as follows:

On page 24, before line 22, insert the following:

(c) CHOICE OF STATE LAW IN INTERSTATE CLASS ACTIONS.—Notwithstanding any other choice of law rule, in any class action, over which the district courts have jurisdiction, asserting claims arising under State law concerning products or services marketed, sold, or provided in more than 1 State on behalf of a proposed class, which includes citizens of more than 1 such State, as to each such claim and any defense to such claim—

(1) the district court shall not deny class certification, in whole or in part, on the ground that the law of more than 1 State will be applied;

(2) the district court shall require each party to submit their recommendations for subclassifications among the plaintiff class based on substantially similar State law; and

(3) the district court shall—

(A) issue subclassifications, as determined necessary, to permit the action to proceed; or

(B) if the district court determines such subclassifications are an impracticable method of managing the action, the district court shall attempt to ensure that plaintiffs' State laws are applied to the extent practical.

SA 5. Mr. PRYOR (for himself, Mr. BINGAMAN, and Ms. CANTWELL) proposed an amendment to the bill S. 5, to amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, and for other purposes; as follows:

On page 5, between lines 2 and 3, insert the following:

''(1) ATTORNEY GENERAL.—The term 'attorney general' means the chief legal officer of a State.

On page 5, line 3, strike ''(1)'' and insert ''(2)''.

On page 5, line 5, strike ''(2)'' and insert ''(3)''.

On page 5, line 12, strike the period at the end and insert the following: '', but does not include any civil action brought by, or on behalf of, any attorney general.''.

On page 5, line 13, strike ''(3)'' and insert ''(4)''.

On page 5, line 17, strike ''(4)'' and insert ''(5)''.

On page 5, line 21, strike ''(5)'' and insert ''(6)''.

On page 6, line 1, strike ''(6)'' and insert ''(7)''.

On page 6, between lines 5 and 6, insert the following:

''(8) STATE.—The term 'State' means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and any territory or possession of the United States.

On page 14, strike lines 20 and 21, and insert the following:

(1) by striking subsection (d) and inserting the following:

''(e) As used in this section—

''(1) the term 'attorney general' means the chief legal officer of a State; and

''(2) the term 'State' means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and any territory or possession of the United States.''; and

On page 15, line 7, insert '', but does not include any civil action brought by, or on behalf of, any attorney general'' before the semicolon at the end.

SA 6. Mr. CORNYN submitted an amendment intended to be proposed by him to the bill S. 5, to amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, and for other purposes; which was ordered to lie on the table; as follows:

On page 26, strike line 21, and insert the following:

SEC. 9. CLASS COUNSEL FEES.

Rule 23(h) of the Federal Rules of Civil Procedure is amended—

(1) in paragraph (1), by inserting ''The claim shall include the number of hours worked on the case each day by each attorney, paralegal, or other individual, a description of the activities performed each day by each individual, and the standard hourly rate charged for each individual.'' after ''time set by the court.''; and

(2) by adding at the end the following:

''(5) LIMITATION.—

''(A) DEFINITION.—For purposes of this paragraph, the term 'lodestar value' means the amount equal to the number of hours worked on a class action case multiplied by the actual hourly rates customarily charged by lawyers of comparable experience.

''(B) IN GENERAL.—The court may not award attorney fees in a class action under this subsection in an amount in excess of 400 percent of the lodestar value for such class action.''.

SEC. 10. EFFECTIVE DATE.

SA 7. Mr. CORNYN submitted an amendment intended to be proposed by him to the bill S. 5, to amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, and for other purposes; which was ordered to lie on the table; as follows:

On page 14, strike line 12 and insert the following:

eral or State officials.

''§ 1716. Opt-in class

''(a) IN GENERAL.—Notwithstanding any other provision of law, upon the motion of a party in a class action under this chapter, a court may refuse to certify a class under rule 23 of the Federal Rules of Civil Procedure unless each member of the class has affirmatively requested to be included in the class.

''(b) NOTICE.—If the court imposes the requirement described in subsection (a), the court shall direct the best notice practicable to all eligible class members regarding the effect of the class action suit on their rights to seek redress in another manner if they do not affirmatively request to be included in the class.''.

SA 8. Mr. CORNYN submitted an amendment intended to be proposed by him to the bill S. 5, to amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, and for other purposes; which was ordered to lie on the table; as follows:

On page 26, between lines 5 and 6, insert the following:

(d) REPORTING OF CLASS ACTION SETTLEMENTS.—

(1) INITIAL REPORT.—Not later than 10 days after court approval of a class action settlement under rule 23(e) of the Federal Rules of Civil Procedure, the attorney for the certified class shall submit a report to the Administrative Office of the United States Courts, which contains—

(A) the title of the case;

(B) the jurisdiction of the court;

(C) the name of the presiding judge;

(D) the date on which the case was filed;

(E) a definition of the putative class, including the number of persons in the certified class;

(F) the name of the defendants, attorneys for the defendants, and the nature of the business of each defendant;

(G) a description of the claim action by court certification;

(H) the name of the firms and attorneys for the certified class;

(I) the amount of the attorneys' fees sought and the amount of such fees approved by the court;

(J) the number of persons in the certified class determined to be eligible for benefits;

(K) the total amount of monetary damages awarded, including the value of any cy pres or similar pay out; and

(L) a specific description of injunctive or similar relief approved by the court.

(2) SUBSEQUENT REPORT.—Not later than the earliest of the date of the final distribution of payments to class members, the date of the reversion of any uncollected benefit to the defendants, or 360 days after the date on which the court approves a class action settlement under rule 23(e) of the Federal Rules of Civil Procedure, the attorney for the certified class shall submit a report to the Administrative Office of the United States Courts, which contains—

(A) the total amount of the attorneys' fees paid, a description of the method used to calculate such fees, and a detailed report of all billing records;

(B) the number of persons in the certified class determined eligible to receive benefits, the number of such persons who received benefits, and the amount of benefits paid to such persons;

(C) an accounting of the total value transferred, including the value of any cy pres or similar pay out, and the value paid by the defendants in noncash benefits; and

(D) if any benefit remains uncollected or has reverted to the defendants, the total value of such benefit.

(3) RULEMAKING.—The Administrative Office of the United States Courts shall promulgate regulations regarding the content, format, and timing of the reports required to be submitted under paragraphs (1) and (2).

(4) PUBLICATION.—The Administrative Office of the United States Courts shall make the information contained in the report submitted under paragraphs (1) and (2) publicly accessible by posting such information on its website.

SA 9. Mr. CORNYN submitted an amendment intended to be proposed by him to the bill S. 5, to amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, and for other purposes; which was ordered to lie on the table; as follows:

On page 26, strike line 21, and insert the following:

SEC. 9. RIGHT OF INTERLOCUTORY APPEAL.

(a) IN GENERAL.—Section 1292(a) is amended by adding at the end the following:

''(4) Orders of the district courts of the United States granting or denying class certification under rule 23 of the Federal Rules of Civil Procedure, if notice of appeal is filed within 10 days after entry of the order. An appeal under this paragraph shall stay all discovery and other proceedings in the district court unless the court finds, upon the motion of any party, that specific discovery is necessary to preserve evidence or to prevent undue prejudice to that party.''.

(b) CONFORMING AMENDMENT.—Rule 23(f) of the Federal Rules of Civil Procedure is amended by striking ''An appeal'' and inserting ''Except as provided under section 1292(a)(4) of title 28, United States Code, an appeal''.

SEC. 10. EFFECTIVE DATE.

SA 10. Mr. CORNYN submitted an amendment intended to be proposed by him to the bill S. 5, to amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, and for other purposes; which was ordered to lie on the table; as follows:

On page 8, beginning on line 7, strike ''The court'' and all that follows through line 13.

SA 11. Mr. CORNYN submitted an amendment intended to be proposed by him to the bill S. 5, to amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, and for other purposes; which was ordered to lie on the table; as follows:

On page 21, line 3, strike ''all of the claims'' and all that follows through ''(IV)'' on page 21, line 8.

SA 12. Mr. FEINGOLD proposed an amendment to the bill S. 5, to amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, and for other purposes; as follows:

On page 22, strike line 22 and all that follows through page 23, line 4, and insert the following:

''(1) IN GENERAL.—Section 1447 shall apply to any removal of a case under this section, except that—

''(A) not later than 60 days after the date on which a motion to remand is made, the district court shall—

''(i) complete all action on the motion; or

''(ii) issue an order explaining the court's reasons for not ruling on the motion within the 60 day period;

''(B) not later than 180 days after the date on which a motion to remand is made, the

district court shall complete all action on the motion unless all parties to the proceeding agree to an extension; and

''(C) notwithstanding section 1447(d), a court of appeals may accept an appeal from an order of a district court granting or denying a motion to remand a class action to the State court from which it was removed if application is made to the court of appeals not less than 7 days after entry of the order.

NOTICES OF HEARINGS/MEETINGS

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

Mr. COLEMAN. Mr. President, I would like to announce for the information of the Senate and the public that the Permanent Subcommittee on Investigations of the Committee on Homeland Security and Governmental Affairs will hold a hearing entitled ''The United Nations' Management and Oversight of the Oil-for-Food Program.'' This is the second of several hearings the Subcommittee intends to hold on this matter. The Subcommittee's first hearing on the Oil-for-Food Program (''OFF Program'') laid the foundation for future hearings by describing how the OFF Program was exploited by Saddam Hussein. This second hearing will examine the operations of the independent inspection agents retained by the United Nations and their role within the OFF Program. The administration of the OFF Program by the U.N. Office of the Iraq Program and the findings of the U.N. Office of Internal Oversight Services will also be examined.

The Subcommittee hearing is scheduled for Tuesday, February 15, 2004, at 9:30 a.m. in Room 342 of the Dirksen Senate Office Building. For further information, please contact Raymond V. Shepherd, III, Staff Director and Chief Counsel to the Permanent Subcommittee on Investigations, at 224–3721.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. SPECTER. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate, on Wednesday, February 9 at 11:30 a.m. to consider pending calendar business.

Agenda:

Agenda Item 1: S. 47—A bill to provide for the exchange of certain Federal land in the Santa Fe National Forest and certain non-Federal land in the Pecos National Historical Park in the State of New Mexico.

Agenda Item 8: S. 63—A bill to establish the Northern Rio Grande National Heritage Area in the State of New Mexico, and for other purposes.

Agenda Item 9: S. 74—A bill to designate a portion of the White Salmon River as a component of the National Wild and Scenic Rivers System.

Agenda Item 14: S. 134—A bill to adjust the boundary of Redwood National Park in the State of California.

Agenda Item 17: S. 153—A bill to direct the Secretary of the Interior to conduct a resource study of the Rim of the Valley Corridor in the State of California to evaluate alternatives for protecting the resources of the Corridor, and for other purposes.

Agenda Item 18: S. 156—A bill to designate the Ojito Wilderness Study Area as wilderness, to take certain land into trust for the Pueblo of Zia, and for other purposes.

Agenda Item 20: S. 163—A bill to establish the National Mormon Pioneer Heritage Area in the State of Utah, and for other purposes.

Agenda Item 22: S. 176—A bill to extend the deadline for commencement of construction of a hydroelectric project in the State of Alaska.

Agenda Item 23: S. 177—A bill to further the purpose of the Reclamation Projects Authorization and Adjustment Act of 1992 by directing the Secretary of the Interior, acting through the Commissioner of Reclamation, to carry out an assessment of demonstration programs to control salt cedar and Russian olive, and for other purposes.

Agenda Item 24: S. 178—A bill to provide assistance to the State of New Mexico for the development of comprehensive State water plans, and for other purposes.

Agenda Item 26: S. 200—A bill to establish the Arabia Mountain National Heritage Area in the State of Georgia, and for other purposes.

Agenda Item 27: S. 203—A bill to reduce temporarily the royalty required to be paid for sodium produced on Federal lands, and for other purposes.

Agenda Item 28: S. 204—A bill to establish the Atchafalaya National Heritage Area in the State of Louisiana.

Agenda Item 29: S. 205—A bill to authorize the American Battle Monuments Commission to establish in the State of Louisiana a memorial to honor the Buffalo Soldiers.

Agenda Item 30: S. 207—A bill to adjust the boundary of the Barataria Preserve Unit of the Jean Lafitte National Historical Park and Preserve in the State of Louisiana, and for other purposes.

Agenda Item 31: S. 212—A bill to amend the Valles Caldera Preservation Act to improve the preservation of the Valles Caldera, and for other purposes, to the Committee on Foreign Relations.

Agenda Item 32: S. 214—A bill to authorize the Secretary of the Interior to cooperate with the States on the border with Mexico and other appropriate entities in conducting a hydrogeologic characterization, mapping, and modeling program for priority transboundary aquifers, and for other purposes.

Agenda Item 33: S. 225—A bill to direct the Secretary of the Interior to undertake a program to reduce the risks from and mitigate the effects of avalanches on recreational users of public land.

Agenda Item 34: S. 229—A bill to clear title to certain real property in New Mexico associated with the Middle Rio Grande Project, and for other purposes.

Agenda Item 35: S. 231—Mr. Smith, et al.—a bill to authorize the Bureau of Reclamation to participate in the rehabilitation of the Wallowa Lake Dam in Oregon, and for other purposes.

Agenda Item 36: S. 232—A bill to authorize the Secretary of the Interior, acting through the Bureau of Reclamation, to assist in the implementation of fish passage and screening facilities at non-Federal water projects, and for other purposes.

Agenda Item 37: S. 243—A bill to establish a program and criteria for National Heritage Areas in the United States, and for other purposes.

Agenda Item 38: S. 244—Mr. Thomas—a bill to extend the deadline for commencement of construction of a hydroelectric project in the State of Wyoming.

Agenda Item 39: S. 249—Mr. Reid, et al.—a bill to establish the Great Basin National Heritage Route in the States of Nevada and Utah.

Agenda Item 40: S. 252—A bill to direct the Secretary of the Interior to convey certain land in Washoe County, Nevada, to the Board of Regents of the University and Community College System of Nevada.

Agenda Item 41: S. 253—A bill to direct the Secretary of the Interior to convey certain land to the land to the Edward H. McDaniel American Legion Post No. 22 in Pahrump, Nevada, for the construction of a post building and memorial park for use by the American Legion, other veterans' groups, and the local community. '

Agenda Item 42: S. 254—A bill to direct the Secretary of the Interior to convey certain land to Lander County, Nevada, and the Secretary of the Interior to convey certain land to Eureka.

Agenda Item 43: S. 263—A bill to provide for the protection of paleontological resources on Federal lands, and for other purposes.

Agenda Item 44: S. 264—A bill to amend the Reclamation Wastewater and Groundwater Study and Facilities Act to authorize certain projects in the State of Hawaii.

In addition, the Committee may turn to any other measures that are ready for consideration.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Mr. SPECTER. Mr. President, I ask unanimous consent that the Committee on Environment and Public Works be authorized to meet on Wednesday, February 9, 2005 at 2:30 p.m. to conduct a hearing to receive testimony on EPA's proposed budget for fiscal year 2006.

The hearing will be held in SD 406.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. SPECTER. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the

Senate on Wednesday, February 9, 2004 at 11 a.m. to hold a Members' Briefing.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

Mr. SPECTER. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor, and Pensions meet in executive session during the session of the Senate on Wednesday, February 9, 2005 at 10 a.m. in SD–430.

The PRESIDING OFFICER. Without objection, it is so ordered.

SELECT COMMITTEE ON INTELLIGENCE

Mr. SPECTER. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on February 9, 2005 at 2:30 p.m. to hold a closed meeting.

The PRESIDING OFFICER. Without objection, it is so ordered.

PRIVILEGE OF THE FLOOR

Mr. KENNEDY. Mr. President, I ask unanimous consent the privilege of the floor be granted to Elizabeth Kennedy, a legal intern in my office, for the duration of consideration of this bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

APPOINTMENTS

The PRESIDING OFFICER. The chair, on behalf of the Vice President, pursuant to the provisions of 20 U.S.C., sections 42 and 43, appoints the Senator from Vermont, Mr. LEAHY, as a member of the Board of Regents of the Smithsonian Institution.

Thie chair announces, on behalf of the Democratic leader, pursuant to the provisions of S. Res. 105, adopted April 13, 1989, as amended by S. Res. 149, adopted October 5, 1993, as amended by Public Law 105–275, adopted October 21, 1998, further amended by S. Res. 75, adopted March 25, 1999, amended by S. Res. 383, adopted October 27, 2000, and amended by S. Res. 355, adopted November 13, 2002, and further amended by S. Res. 480, adopted November 20, 2004, the appointment of the following Senators to serve as members of the Senate National Security Working Group for the 109th Congress: Senator ROBERT C. BYRD, Democratic administrative cochairman; Senator CARL LEVIN of Michigan, Democratic cochairman; Senator JOSEPH R. BIDEN, JR. of Delaware, Democratic cochairman; Senator EDWARD M. KENNEDY of Massachusetts; Senator PAUL S. SARBANES of Maryland; Senator BYRON L. DORGAN of North Dakota; Senator RICHARD J. DURBIN of Illinois; Senator BILL NELSON of Florida; Senator MARK DAYTON of Minnesota.

STAR PRINT—S. 71

Mr. FRIST. Mr. President, I ask unanimous consent that S. 71 be star printed with the changes at the desk.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDERS FOR THURSDAY, FEBRUARY 10, 2005

Mr. FRIST. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 9:30 a.m. on Thursday, February 10. I further ask that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved, and the Senate then begin a period of morning business for up to 2 hours, with the first 30 minutes under the control of the majority leader or his designee, the second 30 minutes under the control of the Democratic leader or his designee, the third 30 minutes under the control of Senator MCCAIN, and the final 30 minutes under the control of the Democratic leader or his designee; provided that following morning business, the Senate resume consideration of S. 5, the class action bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. FRIST. Mr. President, tomorrow, following morning business, the Senate will resume consideration of the class action fairness bill. We made real progress today. We were able to work through several key amendments, and it appears we are very close to final passage. The pending amendment is the Feingold amendment, and we hope to have that ready for a vote by 12:30 tomorrow or thereabouts. Again, I thank all Members for their cooperation throughout this bill. We have made substantial progress over the course of the day, and I look forward to completion of the bill at an early hour tomorrow.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. FRIST. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 5:58 p.m., adjourned until Thursday, February 10, 2005, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate February 9, 2005:

IN THE AIR FORCE

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

MAJ. GEN. CLAUDE R. KEHLER, 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

MAJ. GEN. CHARLES E. CROOM, JR., 0000